

**ENVIRONMENTAL PROTECTION
AIR QUALITY PERMITTING
AIR QUALITY MANAGEMENT
AIR AND ENVIRONMENTAL QUALITY ENFORCEMENT
Open Market Emissions Trading**

Adopted Repeals: N.J.A.C. 7:27-30.20; and 7:27-30 Appendix A

Adopted New Rules: N.J.A.C. 7:27-8.28, 18.11, 30.11, 30.19, 30.20, 30.24, 30.25, 30.27, and 30.29; and 7:27-30 Appendices A, B and C

Adopted Repeals and New Rules: N.J.A.C. 7:27-30.5 and 30.7

Adopted Amendments: N.J.A.C. 7:27-1.32, 8.1, 8.3, 8.4, 8.17, 8.20, 8.25, 16.5, 16.17, 18.5, 19.2, 19.6, 19.13, 19.19, 19.20, 19.21, 19.22, 19.23, 19.24, 19.25, 22.1, 22.3, 22.18, 22.22, 30.1 through 30.4, 30.6, 30.8, 30.9, 30.10, 30.12 through 30.16, 30.18, 30.21, 30.22, 30.23, 30.28, 30.30, and 31.6; and 7:27A-3.10

Proposed: July 6, 1999 at 31 N.J.R. 1671(a).

Adopted: April 17, 2000 by Robert C. Shinn Jr., Commissioner, Department of Environmental Protection.

Filed: April 20, 2000, as R. 2000 d.204 **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2C, especially 26:2C-8 and 26:2C-9.8.

DEP Docket Number: 12-99-06/698.

Effective Date: May 15, 2000

Operative Date: June 6, 2000

Expiration Date: Exempt

Introduction

The New Jersey Department of Environmental Protection (Department) is adopting new rules and amendments at N.J.A.C. 7:27-30, its Open Market Emissions Trading (OMET) Program rule, and related amendments to several other rules in order to enhance and extend New Jersey's OMET program. The new rule and amendments create additional opportunities for the generation of volatile organic compounds (VOCs) and nitrogen oxides (NO_x) discrete emission reduction (DER) credits

and add new provisions for the generation and banking of greenhouse gas (GHG) credits. They also allow additional uses of VOC and NO_x credits (including “permit insurance” uses), increase the portion of VOC and NO_x credits that must be retired for the benefit of the environment from 10 percent to 20 percent for the new “permit insurance” uses, allow the conversion of NO_x Budget allowances and the Emission Offset Program’s banked credits to be converted to DER credits, reorganize subchapter 30 to make it easier to reference, clarify the required procedures for generating, transferring, verifying, voluntarily retiring and using credits, and provide new procedures for circumstances not addressed in the original OMET rule.

The OMET Program was established by the Department to provide incentives for voluntary reductions of air contaminant emissions. It was also established to provide alternative means for regulated entities to achieve compliance with their air pollution control obligations, when conventional control methods were not available or not cost effective. It was intended that both the economic viability of the State and the achievement of clean air goals would be promoted through the OMET Program. The purpose of these amendments is to expand and enhance the OMET Program, so as to more effectively achieve these goals.

Rulemaking history

On August 2, 1995, Governor Whitman signed legislation (P.L. 1995, c.188, §8) which directed the Department to establish an emissions trading and banking program. Consequently, on February 20, 1996 the Department proposed a rule which would establish an emissions trading program, known as the Open Market Emissions Trading (OMET) Program (see 28 N.J.R. 1147(b)). In this proposal, the Department explained that the rulemaking represented Stage One of its response to the legislative directive, in which the basic framework for the OMET program would be established, and that it would be followed by a Stage Two rule proposal which would further develop the OMET Program. The Stage One proposal, which set forth procedures for the generation, banking, transfer, use, and retirement of NO_x and VOC credits, adhered to the principles in New Jersey’s OMET law and was based largely on the USEPA’s August 1995 proposed open market trading rule (OMTR) (see 60 Fed. Reg. 39668). The Department adopted the Stage One OMET proposal on June 3, 1996 (see 28 N.J.R. 3414(a)), and the rules became operative on August 2, 1996. The program established pursuant to these rules is referred to herein as “the Stage One OMET Program.”

As early as June of 1996 the Department established an Emissions Trading Workgroup to advise the Department on the implementation of the Stage One OMET Program and the development of the Stage Two rule proposal.

Additionally, in January, 1998, the Commissioner formed a “Blue Ribbon Panel,” chaired by former Assemblywoman Maureen Ogden, the Assembly sponsor of the legislation which directed the Department to develop a banking and trading program (P.L. 1995, c.188, §8). The Commissioner asked the panel advise the Department on the development of the OMET Program. The Blue Ribbon Panel focused on identifying potential modifications to the Stage One OMET Program which would improve the environmental benefits of the program while lowering the cost of compliance and increasing flexibility for business.

The Stage Two new rules and amendments adopted herein incorporate many of the recommendations made by the Emissions Trading Workgroup and the Blue Ribbon Panel, as well as recommendations made by the Greenhouse Gas Advisory Group, an advisory body formed to advise the Department on the design of a greenhouse gas (GHG) emissions banking program. Also considered were comments received from the New Jersey Department of Transportation and Mosakin International Corporation, the operator of the registry that serves the OMET Program.

Applicability of Amended Quantification Requirements

The quantification methods set forth in the rule amendments being adopted herein are, in general overall concept, the same as those in the original OMET rules promulgated on July 1, 1996. However, these amendments correct certain errors, add new procedural detail, and revise certain elements of the original quantification procedures. These amended requirements shall apply to notices according to the following schedule:

1. Any Notice of Generation or Notice of Intent to Use DER credits submitted to the Registry on or after June 6, 2000 shall meet the requirements of the amended rules being adopted herein, including submission of a protocol that meets these amended rules; any Notice of Generation or Notice of Intent to Use DER credits submitted prior to June 6, 2000 shall meet the OMET rule requirements, including the requirements for protocols, in effect prior to June 6, 2000.
2. Verifiers verifying a Notice of Generation submitted to the Registry on or after June 6, 2000 shall do so with reference to the OMET rule requirements in the amended rules being adopted herein; verifiers verifying a Notice of Generation submitted prior to June 6, 2000 shall do so with reference to the OMET rule requirements in effect prior to June 6, 2000, not the amended rules being adopted herein.
3. Any user submitting a Notice of Use as a consequence of a Notice of Intent to Use that was submitted on or after June 6, 2000 shall conform with the protocol and quantification requirements in the amended rules being adopted herein. Any user submitting a Notice of Use as a consequence of a Notice of Intent to Use that was submitted prior to June 6, 2000 shall conform with the protocol and quantification requirements that applied at the time the Notice of Intent to Use was submitted.

Public Comment

The Department held a public hearing on August 5, 1999 to provide interested parties the opportunity to present comments on the Department's proposed amendments, repeals and new rules. The comment period closed on August 20, 1999. The Department received oral and/or written comments on its proposed amendments, repeals and new rules from the following persons:

1. Alan N. Bogard, Infineum (I-1)
2. James Berube, Mosakin International Corporation (MIC)
3. Hal Bozarth, Chemical Industry Council (CIC)
4. Dale S. Bryk, Natural Resources Defense Council (NRDC)
5. David V. Bubenick, Air Bank (AB)

6. William H. Bunn, Schweitzer-Mauduit, (SM)
7. Peter Chant, Infineum (I-2)
8. Lisa Fleming, Vineland Municipal Electric Utility (V)
9. Toby Hanna, Environmental Resources Management (ERM)
10. Musa A. Maner or Robert A. Walters, Levine-Fricke (LFR)
11. Bradley S. Martin, E.I. du Pont (DP)
12. John A. Maxwell, New Jersey Petroleum Council (NJPC)
13. Peter O'Rourke, Sparber and Associates (SA)
14. Patrick A. Petrella, Stone & Webster (SW)
15. Ellen Radow-Sadat, Drinker, Biddell, and Reath, LLC (DBR)
16. Jim Sinclair, Business & Industry Association (BIA)
17. H.R. Van Handle, TOSCO (T)
18. Bruce M. Wallington, Merck (M)
19. David W. Wilkin, BASF (B)
20. Samuel A. Wolfe, Public Service Electric & Gas Company (PS)

Summary of Hearing Officer's Recommendations and Agency Responses:

William O'Sullivan, Administrator of the Department's Office of Air Quality Regulation, served as the Hearing Officer at the August 5, 1999 public hearing held at the Department's Public Hearing Room at 401 East State Street in Trenton, New Jersey. The Department accepted written comments on the proposal through August 20, 1999. After reviewing the hearing testimony and the written comments, the Hearing Officer recommended that the Department adopt the proposed rule amendments, repeals and new rules, with the changes described below in the Summary of Public Comments and Agency Responses and in the Summary of Agency-Initiated Changes. The Department has accepted the Hearing Officer's recommendation.

The Hearing Officer's recommendations are set forth in the hearing officer's report. A copy of the record of the public hearing (including the hearing officer's report) is available for inspection by contacting:

ATTN: Docket # 12-99-06/698
Department of Environmental Protection
Office of Legal Affairs
401 East State Street
PO Box 402
Trenton, New Jersey 08625-0402

Copies of this adoption document are also available from the Department's website at www.state.nj.us/dep/aqm, where Air Quality Management rules, proposals, adoptions and SIP revisions are available. Specifically, this adoption is available at: www.state.nj.us/dep/aqm/ometp2ad.htm.

Summary of Public Comments and Agency Responses:

The numbers in parentheses after each comment correspond to the number of the commenter, given above, to indicate the person(s) who submitted the comment. The comments are as follows:

GENERAL COMMENTS

1. COMMENT: These commenters commend the Department for its continued efforts to develop the Open Market Emission Trading Program (OMET), and for its patience and perseverance during the three-year long Phase II OMET rule development process. The commenters variously describe the OMET Program as an innovative program that attempts to achieve environmental emission reduction goals through a market based approach, and as an innovative way to provide incentives for aggressive environmental performance. One commenter observed that it may make compliance simpler and more flexible in the future. They indicate that Department staff as individuals, as well as the Department as an organization, should take great pride in the Department's success in effectively transforming a new and innovative air quality compliance concept into a viable and workable environmental management program for New Jersey. Aspects of the program that these commenters complemented included its openness and flexibility, that fact that the program involved third parties in program implementation freeing the Department from potentially burdensome and time-consuming oversight, and the sharing of responsibility and liability among trading program participants. One commenter noted that, having participated in the OMET Phase II Working Group, it is rewarding to see many of the items from that effort being included. (3), (5), (6), (7), (8), (9), (12), (17), (18)

RESPONSE: The Department appreciates the commenters' support.

2. COMMENT: The commenter would like to commend the Department for having utilized the Emissions Trading Workgroup and the Blue Ribbon Panel process to allow the gathering of information and views on the evolution of the State's emission trading program. (12)

RESPONSE: Emissions trading represents a new approach to achieving compliance. It has therefore been the Department's policy to engage in an extensive dialogue with stakeholders as it has progressed from initial concept to promulgated rules. The Department appreciates the commenter's support for this process.

3. COMMENT: The commenter wishes to commend the Department on its overall development of the Stage Two OMET rule. It has been the commenter's experience, and that of many of its clients, that the Stage One regulations provide a true "win-win" approach to air quality management, both for generators and users of DER credits. The expansion of the rules should provide additional opportunities to take advantage of this market-based compliance approach, creating a more robust market for DER credits and continued air quality improvements for New Jersey residents. (10)

RESPONSE: The Department appreciates the commenter's support for the OMET program.

4. COMMENT: The regulatory revisions in this proposal appear to approach a balance between regulatory rigidity and market flexibility. (17)

5. COMMENT: The commenter believes that the Department has taken a voluntary program and attached to it all the “claptrap of command and control” that it can muster. Equally disconcerting is the Department's incorporation of such severe restrictions on the use of banked emissions so as to render them useless. This discourages participation in the program. (1)

6. COMMENT: One commenter objected that aspects of the proposal are punitive to credit users. Instead of allowing the positive benefits of trading to accrue by supporting an active system, the Department has shown itself to be bound by the bureaucratic chains of the present system and has taken an antagonistic approach to trading. Instead of fostering responsibility for required emission reductions by allowing numerous uses based on ways of complying with limits, the Department retains the attitude that users are paying for non-compliance and lays out punitive restrictions cloaked in a guise of environmental concern. While the concern may be genuine, the results of the actions are not at all environmentally progressive in terms of the trading process. (8)

RESPONSE to Comments 4 thru 6: In rulemakings for the OMET program, the Department strives to find the appropriate balance between establishing mandates and allowing flexibility. The Department is seeking to design a Program which provides regulated entities flexibility so that they may comply with air quality requirements at lesser cost, but which also ensures that environmental protection is sustained.

7. COMMENT: Since the rule proposal is entitled “open market emission trading” it is likely that the general regulated community is not aware of the new mandatory nature of this proposal or the wide-ranging impact that the proposal has on permitting and enforcement programs. The commenter suggests the Department refrain from adopting this rule proposal and work with the regulated community and the Blue Ribbon Panel to improve on the objectionable portions of the rule proposal. (3), (12)

8. COMMENT: As mandatory use of credits is not consistent with voluntary emission trading systems, the Department should remove all mandatory uses of emission credits from the rules. (11)

9. COMMENT: The Department should not build a regulatory hammer into the OMET program rules but should keep the OMET rules flexible. The OMET rules should not require any mandatory uses. (16)

RESPONSE to Comments 7 thru 9: The Department has provided the general regulated community extensive opportunity to become aware that the OMET Program includes mandatory uses of DER credits as well as voluntary uses, and therefore the Department has determined that it is appropriate to proceed with the adoption of these amendments. From the outset, the OMET Program has included both types of uses. These amendments enlarge both the number of mandatory uses and the number of voluntary uses. In the development of these amendments, the Department has provided stakeholders, including members of the regulated community, with extensive opportunities to be involved in discussion of program issues and to inform themselves about these amendments, including by participating in the Emissions Trading Workgroup and/the Greenhouse Gas Advisory Group. Notice of the information of these groups and announcement of initial meeting dates were published in the New Jersey Register, together with notice that the meetings were open to any

member of the public. (See 28 N.J.R. 1405(b), 28 N.J.R. 4676(a), 29 N.J.R. 382(c), 30 N.J.R. 240(b).) In addition formal notice and opportunity for public comment was given in the proposal of rule amendments, published in the July 6, 1999 New Jersey Register.

10. COMMENT: The commenter remains a strong supporter of the Department's OMET program. The program creates an important tool for cost-effective improvements in air quality. The ability to create credits under the Department's program encourages sources to reduce their emissions voluntarily, provides a lower-cost compliance option to the potential credit buyer, and helps to identify opportunities for broader emission reductions. Open market trading also gives the Department the ability to ensure that exemptions and waivers from air pollution control requirements do not compromise air quality. (20)

RESPONSE: The Department appreciates the commenter's support of the OMET program.

11. COMMENT: Based on our extensive emission credit trading market experience in all of the open market emission trading states, we know that for such a system to succeed, it must provide a clear and measurable environmental benefit. Further, its utility as a voluntary compliance tool, will be defined by program participants who view the requirements of the trading rule and its implementation as being consistent with other federal and State environmental requirements. (5)

RESPONSE: The Department agrees that it is important that the interested public as well as program participants understand that the OMET program contributes to the protection of human health, welfare and the environment from air pollution. Ways that the OMET program contributes include encouraging voluntary reductions, providing more cost effective compliance alternatives, and requiring compensation with credits instead of waivers and exemptions. The OMET Program registry, which is publically available on the internet, provides documentation of these these actions.

As for consistency with other federal and State environmental requirements, the OMET Program is being submitted as revision to New Jersey's State Implementation Plan (SIP) to EPA for approval. EPA will not grant this approval unless the OMET Program conforms with all applicable federal laws, regulations, and guidance.

12. COMMENT: As articulated in the Background and Discussion section of the proposal, the proposed revision seeks to build upon the initial OMET framework adopted by the Department in 1996. This framework includes several features that the Natural Resources Defense Council (NRDC) believes to be important to an effective rule. For example, the Department's use of third-party verifiers demonstrates a creative solution to the concern that an agency approval process for the creation and/or use of discrete emission reduction (DER) credits could result in a significant bottleneck in what otherwise might be a very active market. Further, the Department's hybrid penalty approach provides a useful division of responsibility among major players in the market. Requiring that DER credit generators, verifiers and users each accept responsibility for their primary actions in the market ensures that the needed level of integrity exists within the system without overburdening any one entity to the extent that risks and transaction costs would preclude its

participation. Clearly, without adequate participation by the private sector in any one of these roles, the market could not function. (4)

RESPONSE: The Department appreciates the commenter's support of the OMET program and recognition of the Department's efforts to fairly and otherwise appropriately assign responsibility within this program.

13. COMMENT: There are many potential benefits of open market emissions trading (OMET). OMET can create incentives for environmentally progressive activity and disincentives for environmentally detrimental activity; this is in contrast to the present permitting system, which 'rewards' sources taking environmentally progressive action by requiring a permit and additional pollution controls, the cost of which puts them at an economic disadvantage to competitors, and encourages older, higher-emitting sources to continue operating without modification and extra cost. The OMET Program could free up Department resources by eliminating time-consuming case-by-case permit limit negotiations if sources were allowed to comply with permit limits through the use of credits. Allowing sources to comply with permit limits through the use of credits would also promote an active trading system which in turn would drive emission reductions on its own.

Unfortunately, with the proposal of these amendments, the Department is not grabbing hold of this tool, and is instead retreating from the progressive move it made in creating the OMET program in the first place and moving in a direction that will all but eliminate active emission trading in the state. The goals espoused by the Department in the proposal document are good, but none are actually being met or furthered by these amendments. (8)

14. COMMENT: One commenter suggested that the OMET program can only effectively assist State regulators in meeting their air quality goals if the State develops additional opportunities for DER credit use. Increasing opportunities for DER credit use will increase the demand for credits, drive up the market price and thereby provide an incentive for New Jersey emission sources to identify low-cost options for achieving surplus reductions. This increased incentive will also drive innovation in the processes and technologies that are used by industry in New Jersey. The availability of low-cost compliance options in the form of DER credits will also make it possible for the Department to require more extensive reductions in new regulations than would have been possible in the absence of the market. (4)

15. COMMENT: One commenter suggested that participants in the Emissions Trading Workgroup were concerned that the proposed rule does not sufficiently address enhancing DER credit demand. The industry participants' primary focus for enhancing DER credit demand was that of permit flexibility. The commenter urged the Department to include broader DER credit uses for permit flexibility in the program. Expanding DER credit uses for permit flexibility in the Department's Gold Track/Silver Track permit flexibility initiative (a new Department initiative, still under development, that would reward companies that have outstanding environmental records with less burdensome oversight requirements) could be a key factor in this initiative's success by enhancing DER credit demand. (9)

RESPONSE to Comments 13 thru 15: The amended rules at N.J.A.C. 7:27-30.14 include additional mandatory and optional uses for DER credits. However, these commenters correctly observe that the new uses will at best only modestly expand the demand for DER credits. The Department has deferred to the future the decision as to whether or not to undertake any further expansion of the required use of credits. The Department anticipates that this issue will be taken up on a case-by-case basis. For example, as work proceeds on the Gold Track/Silver Track permit flexibility initiative, consideration will be given to whether use of DER credits will have a role and how broad that role should be.

16. COMMENT: The proposed revisions are quite detailed and complicated, making a thorough review and analysis within the short comment period allowed (a period when many potentially affected parties are also very busy with implementation of the new NO_x Budget program) extremely difficult. The Department's reticence to release any rule language prior to the official proposal leaves participants in this process scrambling to evaluate the details of the rule in a short time frame. The Department should be aware that the comments it receives are not likely to represent a complete response. (8)

RESPONSE: It is not the Department's usual practice to release proposed rule language to some parties prior to the publication of the rule in the New Jersey Register, in order to ensure that all interested parties have equal opportunity to review and respond to a rule proposal. However recognizing that this proposal was detailed and complex, the Department provided a longer public comment period than usual. State law provides for a minimum 30-day public comment period. In most cases the public comment period for air quality rule proposals is about five weeks; in this case the comment period was six and one-half weeks.

17. COMMENT: The commenter thanks the Department for leading the effort toward the more diverse use of the emission credit trading concept in meeting the environmental goals of New Jersey. (7)

RESPONSE: The Department appreciates the commenter's support.

18. COMMENT: We are greatly troubled by the Department's lack of adoption of many of the principles proposed by the Commissioner's Blue Ribbon Panel on Open Market Emission Trading. (1)

19. COMMENT: The commenter invested a substantial amount of time and effort working with the Commissioner's Blue Ribbon Panel to develop recommendations for modifications to the OMET program that would make it both more environmentally sound and more useful to industry. The Panel represented a broad group of interested parties who unanimously supported the recommendations included in its final report. It is a great disappointment that the Department's proposed revisions to the OMET rule do not reflect these recommendations. (4)

RESPONSE to Comments 18 and 19: The Department appreciates the time and effort the commenter and the other members of the Blue Ribbon Panel (BRP) spent on developing recommendations for the OMET program specifically and for emissions trading more generally. The Department carefully considered each of the BRP's recommendations. Of the eight recommendations the BRP made for this rulemaking, the Department adopted three, partly adopted two, partly accepted one as policy, not adopted one, and one recommendation proved to be not viable. The Department's disposition of each recommendation is summarized in the table below:

RECOMMENDATION	DEP RESPONSE
Increase percent of used credits retired to benefit the environment from 10% to 20%.	Adopted only for permit insurance uses.
Allow sources to use credits whenever the Department considers granting new waivers, exemptions or variances.	The Department intends to consider, and when appropriate allow, credit use whenever new waivers, exemptions or variances are proposed.
Encourage violators to use credits as part of a penalty settlement in a quantity of equivalent cost to the financial penalty.	Adopted.
Allow use of credits to comply with permit limits without prior Department permit review if no adverse local impacts and no federal prohibition.	Adopted for permit insurance uses under the conditions set forth in the amended rule.
Allow the conversion of NO _x Budget Allowances into DER credits.	Adopted.
Allow the conversion of emission offsets into DER credits under certain circumstances.	Adopted.
Allow emission offsets created from shutdowns in New Jersey to be used by sources outside New Jersey.	Not adopted.
Encourage participation in a pilot project related to facility-wide permitting	Not viable because the pilot project did not materialize.

20. COMMENT: The commenter commends the Department for the work that has been done in the OMET program and greenhouse gases, appreciates the proposed changes at N.J.A.C. 7:27-30.8, and appreciates the opportunity to be part of the OMET program development process. (2)

RESPONSE: The Department thanks the commenter for these remarks.

BACT/LAER/SOTA - N.J.A.C. 7:27-8.4(r), 22.3(uu), 30.14(a)5

21. COMMENT: There is no provision in proposed N.J.A.C. 7:27-8.4(r) that provides flexibility to accommodate erroneous permit limits. Where a source's permit limit is erroneously set by a consultant far below the SOTA levels, and where this permit limit is subsequently approved by the Department, when the source gets a new SOTA limit the source can comply with, should the source be required to, or given the choice to, use DER credits to compensate for the difference between the old allowables permit limit and the new allowables permit limit? Also, for many facilities, until the equipment actually operates, insufficient information is available to ensure that the original BACT, LAER or SOTA limits can be met. In such a case, the permittee should not be required to purchase credits. (9), (15)

22. COMMENT: The proposal at 7:27-8.4(r)4 and 22.3(uu)4 should be modified so that a DER credit purchase to cover this case-by-case situation is optional, and not a required purchase. The credit purchase should cover the period when actual exceedance of the permit limit occurs. The issuance of a new permit will require offsetting or netting of increased emissions in compliance with Subchapter 18 and the Federal NSR/ PSD requirements. The offsets or netting are permanent reductions and should not be duplicated by requiring DER credit purchases for the life of the equipment. (17)

23. COMMENT: The Department should eliminate the requirement to use DER credits for the life of the equipment if the permittee's actual emissions comply with the new permit limit.

24. COMMENT: The proposal would require compensation for the difference in the old allowables permit limit based on SOTA and the new less stringent allowables permit limit. Under the less stringent permit, the actual emissions could increase but be below the old allowables permit limit. (9)

25. COMMENT: Proposed N.J.A.C. 7:27-30.14(a)5 would require a permittee to purchase DER credits to compensate for the increase in allowable emissions from equipment and/or control apparatus resulting from the replacement of a BACT, LAER or SOTA permit limit with a less stringent limit. For a permit limit exceedance, the permittee would be required to compensate forever between the difference between the original permit limit and the revised permit limit. The commenter recognized the value in this concept. It does add a required credit use, which will help to make the trading market more active. It also provides an incentive for permit applicants to ensure that the application best reflects what the equipment or control apparatus can achieve in practice.

However the commenter also expressed concerns. First, purchasing credits for an indefinite period will make the process of negotiating permit limits much more contentious (making litigation more likely); for example, vendors may shy away from conservative performance quotes because the vendor risks losing business when the cost per ton of emission reduction increases with more conservative emission estimates. Second, it will impose a heavy burden on unsophisticated permit applicants who may be misled by vendors of equipment or control apparatus about what emission levels can be attained. Third, since permit limits are to some extent speculative, in that permit limits are set before the equipment or control apparatus actually begins operating, is it appropriate to require ongoing credit use for speculative permit limits? Buying DER credits for the life of equipment is not a risk many people would be willing to take.

The commenter concluded that the Department should require credit use to compensate for emissions above the permit limit only until the permit limit is revised. (20)

RESPONSE to Comments 21 through 25: When the Department issues a permit, it is the Department's expectation that the company will comply with all BACT, LAER, and SOTA emission limits in the permit. And if subsequently the company finds that the emission source covered by the permit is not operating in compliance with one or more of these emission limits, the Department expects that the company will take all reasonable actions to bring the source into compliance. Only in the unusual circumstance where a company, despite taking all reasonable efforts to bring a noncompliant emission source into compliance, finds that compliance is not feasible would the Department consider revising a BACT, LAER, or SOTA limit to a new less stringent level, and the Department would in fact do so only if that higher limit is shown to meet all applicable rules, including the requirement to incorporate advances in the art of air pollution control.

The provisions proposed at 7:27-8.4(r)4 and 22.3(uu)4 would have required compensation with credits for the difference between the original BACT, LAER, or SOTA limit and the new limit, in the unusual case where the Department increases a permit limit because the original limit cannot be met. However, the above commenters questioned the advisability of such a requirement. After considering these comments, the Department made a determination not to proceed with this proposed use, and in the adopted amendments the Department has not included this use of DER credits. Also, throughout the adopted amendments, references to these proposed provisions have been omitted, related provisions at proposed N.J.A.C. 7:27-30.14(a)5 have not been adopted, subsequent provisions have been renumbered, and citations have been revised to reflect these changes.

26. COMMENT: One commenter asked how the Department distinguishes between permit limits that "reflect that the equipment and/or control apparatus incorporate advances in the art of air pollution control" and those that do not? Are all permit limits in this class? (8)

RESPONSE: This phrase was proposed to be included in the amended rules at N.J.A.C. 7:27-8.4(r) and 22.3(uu) and in the proposed Class 3 permit insurance uses at N.J.A.C. 7:27-30.14(e)3. As the provisions at N.J.A.C. 7:27-8.4(r) and 22.3(uu) and at N.J.A.C. 7:27-30.14(e)3 are not included in the adopted amendments, as explained in the response to comments 21 through 25 above and to comments 46 through 49 below, explanation of the Department's intended meaning is no longer relevant.

27. COMMENT: N.J.A.C. 7:27-8.4(r)2 refers to a finding of "no reasonably available means" to further reduce emissions. The commenter suggests additional clarification of this terminology. The term "reasonably available" should be clarified since it has historically implied both technical and economic feasibility. Is a similar interpretation is intended here? (10)

RESPONSE: The text proposed for N.J.A.C. 7:27-8.4(r)2 has not been adopted, as discussed in the previous response. Therefore, clarification of the phrase "no reasonably available means" which was used in this text is no longer needed.

GREENHOUSE GASES

For comments and responses related to greenhouse gases in addition to those below, see the responses to comments for sections N.J.A.C. 7:27-30.2 and 30.5.

28. COMMENT: We take exception to the proposed promulgation of regulations concerning greenhouse gas (GHG) emissions as part of the OMET Rules. Although the Department has grant funds from the USEPA to develop a GHG trading system, there has been little public awareness and inadequate stakeholder discussions to support rule making at this time. In addition, the proposed rules are too restrictive and do not deal with the uses of banked reductions. Delete all reference to greenhouse gas in the rule. This should be a separate rule with more time for the public attention of a different group of constituents. (1), (3)

RESPONSE: The Department believes that it is important to establish a GHG bank as soon as possible. Therefore it has included provisions for GHG banking in the adopted amendments. A GHG bank provides persons in New Jersey who voluntarily reduce their GHG emissions to claim credits for their actions, provided that they are willing to document their reductions. The bank is a forum in which persons who voluntarily act to help forestall climate change and sea level rise can be recognized. The Department has sought input from the interested public in the development of the bank by establishing a Greenhouse Gas Advisory Workgroup which is open to all interested parties. Notice to the public of the establishment of this workgroup was provided in the January 5, 1998 New Jersey Register at 30 N.J.R. 240(b).

29. COMMENT: The requirements for GHG trading are initially being determined by an international trade agreement (Kyoto Protocol). GHG trading rules are more appropriately developed as national trading requirements similar to the Federal SO₂ program. Development of individual state rules will inhibit the ability to develop a single and successful set of rules for the U.S. (1)

RESPONSE: Should eventual federal laws, rules, or treaties prove inconsistent with the Department's GHG banking rules, the Department could modify its GHG banking rules to accommodate those laws, rules, or treaties, or the Department's rule could become superseded by them. Meanwhile, these State banking rules provide an opportunity to recognize those persons in New Jersey who take early action to reduce their GHG emissions.

30. COMMENT: The commenter supports the Department's effort to create a greenhouse gas (GHG) credit bank. However, the commenter raises concerns about whether the banking of GHG credits will be economically feasible. Trading of greenhouse gas emission reductions has already occurred; the commenter understands that prices for these reductions in recent transactions have ranged from \$0.50 to \$2.00 per metric ton of carbon equivalent. Compared with these prices, the fees involved in recording credit transactions on the registry are high enough to raise a substantial barrier to these transactions. Under the current registry fee schedule, a generator will pay \$0.45 per metric ton just for the notice of generation, potentially consuming almost the entire value of what the generator is recording on the registry. When the additional registry fees for notices of

verification and notices of transfer are considered, the disincentive for voluntarily recording GHG credits on the registry is even stronger.

The commenter expressed concern that the registry's fees for GHG credits could prove prohibitive, particularly since the registry operator has complete discretion in setting these fees and has a monopoly in providing registry services for New Jersey's OMET program. The only alternative for a company seeking to record credits on the registry is to refrain from putting those credits into the OMET program at all. (1), (20)

RESPONSE: The Department acknowledges these commenters' concerns regarding the costs of GHG credit banking. The registry operator sets the fees amounts, but does not have "complete discretion" in establishing registry fees. The registry operator is a private party selected through an open competitive bid process, and the State's contract with the registry operator establishes maximum amounts the registry operator may charge for various registry services. The registry operator was present at the public hearing on these proposed amendments and is therefore aware of these commenters' concerns about the amount of fees. At the hearing, a representative of the registry operator acknowledged that if banking is not economically viable it would "result in a diminution of trades" and indicated that his company would study how to reach "some equitable way to address" the matter. In deciding whether or not to bank GHG credits, a potential credit generator will need to take into account the cost of registry fees. While prices for GHG credits are low today when there is little or no demand for the credits, the potential credit generator will also have to assess whether there may be more demand for the credits in the future and whether their value will therefore increase.

31. COMMENT: The proposed regulations dealing with greenhouse gases were for the most part developed unilaterally by the Department. They are too prescriptive and limiting. Putting aside the issue of whether New Jersey should be promulgating such regulations, given the international and national scope of the issue, the requirements of the regulation set a negative precedent for Silver Track II. The Department wants to encourage facilities to achieve enhanced environmental performance. The voluntary Silver and Gold Track programs are the vehicle for doing so. If the requirements demanded by the Department in exchange for flexibility are too onerous, there will be no program participants. This is especially true for Silver Track II, which has a greenhouse gas reduction requirement that would be subject to these regulations. NJDEP should await federal development of an emission trade and bank system for CO₂. (1)

RESPONSE: The Department has sought input from the interested public in the development of the bank through the Greenhouse Gas Advisory Workgroup. Through a notice in the January 5, 1998 New Jersey Register at 30 N.J.R. 240(b), all interested members of the public were invited to participate. The promulgation of the GHG bank should complement, not negatively affect, the Department's ongoing development of voluntary Silver and Gold Track programs. The basic concept of the Silver and Gold Track programs is that participating regulated entities would be allowed more operational flexibility, but to qualify to participate an entity would have to agree to meet a higher environmental commitment than would otherwise be required. The Silver and Gold Track programs would be composed of three programs: Silver Track, Silver Track II, and Gold Track. In relation to each other, the Silver Track program offers the lowest environmental

commitment a regulated entity would have to agree to meet in return for the least operational flexibility; the Gold Track program would offer the highest environmental commitment a regulated entity would have to agree to meet in return for the most operational flexibility. The Silver Track II program would be in between the Silver Track and Gold Track programs. The Department is currently engaged in the process of defining the Silver Track II and Gold Track programs, and has established a stakeholders workgroup which is offering recommendations to the Department. One condition for participation under discussion is that regulated entities in the Silver Track II Program and the Gold Track Program should have to commit to reducing their facilities' GHG emissions. If this is accepted, the GHG bank would provide a mechanism for participating regulated entities who wish to do so to document their reductions and claim credit for them in the bank.

32. COMMENT: Interstate trades of criteria pollutants currently are extremely difficult due to different banking and trading systems from state to state. EPA's SO₂ market system was very successful, primarily since it was a national bank and trade system that was not complicated by state borders. The same model should be followed for CO₂ banking and trading. Development of individual state rules will inhibit the ability to develop a single and successful set of rules for the U.S. (11)

RESPONSE: At some time in the future, there may be a national or international trading system for GHGs. If and when this occurs, and if the national and/or international system is inconsistent with New Jersey's GHG bank, the Department may modify its rules as appropriate to become consistent with the larger system. Therefore, New Jersey's GHG bank may better be viewed as a stepping stone that may help lead to a single national program, and not as a barrier to such a program.

33. COMMENT: The requirements for greenhouse gas (GHG) trading are initially being determined by an international trade agreement (Kyoto Protocol). New Jersey rules already over-restrict the generation of such credits. New Jersey rules allow no credit for reductions prior to rule promulgation, while the international treaty allows for credit dating back to 1990. This is clearly extremely discriminating - to New Jersey businesses, both in comparison to the rest of the U.S., and in comparison to the international community. Further, it immediately discriminates against companies who have come forward since 1990 to voluntarily reduce and report GHG emissions, and who had expected to be protected from further, more extreme reductions after they have already expended their funds. One of the commenters recommended that the Department delete the GHG Trading section, and await national development of a CO₂ program. (1), (3), (11)

RESPONSE: All companies may register their GHG emission reductions since 1990 with the United States Department of Energy under Section 1605(b) of the Energy Policy Act of 1992. New Jersey's GHG bank provides companies an additional opportunity to claim credit for voluntarily reducing emissions in New Jersey. To maximize the incentives for voluntary early reductions, the Department believes it should not delay the establishment of a banking mechanism for greenhouse gases. The OMET Program commenced on August 2, 1996, and it has not been designed as a mechanism for registering reductions that occur before that date. However, the OMET Program does include recognition of earlier actions by allowing, at N.J.A.C. 7:27-30.6(c), the opportunity to claim

credit for reductions that occur after August 2, 1996 which result from actions that commenced before that date, but after 1990.

34. COMMENT: The proposal describes how to generate GHG credits, but includes no allowed uses. The commenter was concerned that the next step will be to reduce uses of the generated credits and/or eliminate the credits altogether. (3)

RESPONSE: The scope of the rulemaking included only the establishment of a GHG banking mechanism. It did not consider how GHG credits might be used. This matter will be addressed in the future, perhaps after there is consensus at a national level on a policy framework for greenhouse gases.

PERMIT INSURANCE - 30.13(b)3iv, 30.14(d), 30.14(e)

35. COMMENT: In the proposed revisions to the existing rule at N.J.A.C. 7:27-30.13(b)3iv, NRDC supports the application of a 20 percent premium for the new "permit insurance" uses. NRDC believes that the additional flexibility afforded to sources from this use type should have a corresponding increased benefit to the environment. Permit insurance as currently defined, and potentially other types of operational flexibility uses that could be included in the future, represent important opportunities for the OMET program to make New Jersey a more attractive location for industry, while ensuring that the environment continues to improve. (4)

RESPONSE: The Department appreciates the commenter's recognition of the Department's efforts to balance compliance flexibility for emission sources and protecting air quality.

36. COMMENT: The Department expended considerable resources researching and negotiating DER credit uses for permit flexibility. During this process, the Department representatives' philosophies on permit flexibility improved significantly. The proposed "permit insurance" DER credit uses that resulted are, however, very limited and will, at best, result in only a minimal increase in DER credit use. (9)

37. COMMENT: The Commissioner's Blue Ribbon Panel (BRP) recommended to the Department that a 20 percent retirement premium would be acceptable, if "operational flexibility" were allowed. However, no real flexibility is allowed; thus, the 20 percent retirement premium, proposed at N.J.A.C. 7:27-30.13(b)3iv for permit insurance use, is excessive. The level is double what other states apply for the same such credit, thus making New Jersey extremely unfriendly to the business community. The retirement premium should be changed to 10 percent, and the flexibilities be doubled. (1), (11), (19)

38. COMMENT: The commenter objected to the loss of operational flexibility which the proposal represents. (8)

RESPONSE to Comments 36 thru 38: The Department recognizes that certain stakeholders believe that compliance flexibilities greater than those included in the proposed amendments should be allowed. However, the Department thoroughly examined each recommended flexibility and included only those that it found consistent with preserving or enhancing current levels of air quality protection. Although these commenters judge the flexibilities that have been included to be “very limited,” the Department believes that the new uses of DER credits do offer significant new opportunities for compliance flexibility. To ensure that the net effect of this unusual degree of flexibility is one at which air quality protection is preserved, the Department has included a number of factors which will require an unusual level of compensation for the emission increases, particularly for permit insurance uses. One factor is the requirement to retire at the time of credit use 20 percent of the total number of credits used for the benefit of the environment.

39. COMMENT: While the principle of permit insurance is positive and while the Department’s goal of offsetting fines and violations with DER credits is innovative and laudable, the maximum limits of 5 tons VOCs or 10 tons NO_x in a 12-month period, as proposed at N.J.A.C. 7:27-30.14(d)3, would severely restrict operational flexibility and the usefulness of these concepts. (1), (11), (19)

40. COMMENT: In proposed N.J.A.C. 7:27-30.14(d)3, what is the basis for the tonnage cap for VOCs and NO_x? It seems so restrictive when the terms of previously allowed uses for such things as RACT compliance are much more open and can potentially involve much greater mass emissions at much higher actual emission rates. In some cases, compensation for the design margin in the credit use equation could itself be more than the cap. (8)

RESPONSE to Comments 39 and 40: Proposed N.J.A.C. 7:27-30.14(d) lists the conditions a person is required to meet in order to use DER credits for a permit insurance use. One of these conditions, set forth at proposed paragraph (d)3, is that even though more than one permit insurance use may be implemented concurrently at a facility, the resulting increase at the facility in actual emissions may not exceed five tons of VOC or 10 tons of NO_x for all permit insurance uses combined for any 12 month period. The basic difference between using VOC or NO_x DER credits to comply with RACT requirements and using VOC or NO_x DER credits for permit insurance is that use of credits to comply with RACT requirements involves foregone emission reductions at a facility while use of credits for permit insurance involves emission increases at a facility. Therefore, it is important to keep emission increases to “de minimis” amounts to avoid adverse local effects. The five ton cap for VOC emissions and the 10 ton cap for NO_x emissions were judged to be appropriate de minimis limits on facility-wide increases in the context of allowing increased emissions at a facility without a permit review.

41. COMMENT: As the rule is currently written, the voluntary violation offset capability will not apply to the majority of minor air permit violations. Most air permits in New Jersey have process parameters that are monitored to determine compliance. If the monitored parameter is exceeded, a permit violation is issued by the Department, regardless if emission limits were exceeded. To expand the usefulness of DER credits, the Department should excuse air permit parameter exceedances if a facility can demonstrate that an emissions limit was not exceeded, or if it was, is offset by the use of DER credits. (11)

RESPONSE: The adopted amendments allow a permittee, under the permit insurance provisions at N.J.A.C. 7:27-30.14(d) and (e), to use DER credits to exceed an emissions limit in a permit. The commenter suggests that a permittee should also be allowed to use DER credits to comply with a permit process parameter limit. In permits, limitations on process parameters (such as limits on how much fuel may be burned or how much coating may be applied, in a given time period) are often used as more readily measureable and verifiable surrogates for limits on emissions. Allowing use of DER credits to comply with a permit process parameter limit is a type of use that was not considered by the Department in this rulemaking. The Department agrees that it may be an appropriate additional use for DER credits and will consider this recommendation when these rules are subsequently amended.

42. COMMENT: Proposed N.J.A.C. 7:27-30.14(d)1i would require that, for "permit insurance" uses, the use period must be one or more calendar quarters. This seems to suggest that a permit insurance use cannot begin on any date other than January 1, April 1, July 1, or October 1. PSE&G requests that the rule be revised to allow the use period to be any three-month period. (20)

RESPONSE: New rule N.J.A.C. 7:27-30.14(d)1i requires that, for "permit insurance" uses, the use period must be one, two, three, or four calendar quarters. This means that a permit insurance use cannot begin on any date other than January 1, April 1, July 1, or October 1. This requirement is meant to make the use period coincide with the reporting periods for the quarterly Excess Emission Reports (EERs). This should be administratively more efficient for facilities and for the Department, and is expected to allow for possible future consolidation of reports since the reporting intervals are the same.

43. COMMENT: Proposed N.J.A.C. 7:27-30.14(d) would require that sources purchase DER credits up to allowable levels, rather than to compensate for actual increases. When actual increases can be determined, sources should be required to purchase DER credits to compensate for actual increases. (4)

RESPONSE: New rule N.J.A.C. 7:27-30.14(d) allows a VOC or NO_x permit limit to be exceeded if the permittee buys "permit insurance" to compensate for an exceedance. To ensure that the net effect of this unusual degree of flexibility is one at which the current level of air quality protection is preserved, the Department has included a number of factors which will require an unusual level of compensation for the emission increases. One of these factors is the requirement that a user compensate in full for the potential increase in allowable emissions, not just for the actual emissions increase.

44. COMMENT: We support the general principle of permit insurance in proposed 7:27-30.14(e) – but this proposal is too complex and restrictive to be useful to the regulated community. (3)

RESPONSE: The Department agrees that making a trading program more complex and restrictive than it needs to be will undercut its effectiveness. However, a trading program will also not be

acceptable unless it contains sufficient provisions to ensure and document the preservation of air quality protections. In developing the OMET Program Department has attempted to strike a balance, and the Department believes that in a reasonable number of cases the degree of flexibility allowed under the OMET Program will prove sufficiently useful to permittees that they will be willing to take on the administrative requirements of the program.

45. COMMENT: Proposed N.J.A.C. 7:27-30.14(e)2 would allow Class 2 "permit insurance uses," which allow the operation of modified equipment or control apparatus pending the Department's processing of a permit application for the modification. It also would create the possibility of a violation which could not be predicted in advance. A user may select a ceiling rate which conforms to the requirements of the rule, keep the user source's emissions below the ceiling rate, and use the appropriate quantity of DER credits. Nonetheless, if the Department eventually establishes a permit limit below the selected ceiling rate, there will still be a violation - even when there is no way the user could have known in advance what the eventual permit limit would be, and therefore have no way of preventing the violation. This risk may discourage a person from engaging in a Class 2 use. (20)

RESPONSE: The provisions do allow the permittee to take actions that may afterwards be determined to be a violation. These provisions were included in the proposed amendments upon the recommendation of members of the Emissions Trading Workgroup. These persons argued that in many cases permittees are confident in advance of the Department's approval of a permit revision that the Department will approve the changes they have proposed, and that it may undermine a company's competitiveness to be compelled to wait until the new permit is in fact approved to begin operating under the terms of the new permit. They argued that a company should be have the flexibility to proceed "at risk" during the permit review period, provided that the company uses DER credits to compensate for the increase in potential emissions. The Class 2 permit insurance provisions at N.J.A.C. 7:27-30.14(e)2 reflect this recommendation. These "at risk" provisions could be considered comparable to the provisions of the "Permit at Risk" section of the Air Pollution Control Act (N.J.S.A. 26:2C-9.3 and 9.4), which allow permittees to proceed to operate pollution control equipment or devices or to implement pollution prevention process modifications while the permit review is still pending, provided that the permittees do so "with the clear and full understanding that they assume all risks for their actions." It is appropriate that this risk discourage a person from engaging in a Class 2 use. Only persons who are very certain that the Department will approve their permit application and who are willing to accept the consequences if the Department does not should implement a Class 2 use.

46. COMMENT: The commenter is concerned over what appears to be "highly constrained" permit insurance provisions in the revised OMET rule. The level of constraints imposed by proposed N.J.A.C. 7:27-30.14(e)3 may impede rule usage. The understanding is that Class 3 permit insurance uses are intended for user sources with new or modified equipment or control apparatus that fails to meet the promised emission limits. Until the permit limit is revised upward to reflect what the equipment or control apparatus can actually achieve, a multiplier of 1.5 applies to this use. This means that the user may end up compensating for the difference between the original permit limit

and the revised permit limit indefinitely. The commenter believes that the Department did not intend such a result, and hopes that all of the permit insurance provisions can be revisited. (5)

47. COMMENT: The rule should make it clear that the credit use requirement in proposed N.J.A.C. 7:27-30.14(e)3 would apply only when a permit limit for NO_x or VOC is revised, and not when a permit limit is revised for another pollutant not tradable in the OMET program. (20)

48. COMMENT: The proposal should allow the continued operation of the facility without additional penalty, if the facility commits to and purchases DER credits to cover the increase in actual emissions above the permit limit. This commitment should not be required where emissions are measured by CEMS and the facility can demonstrate compliance with the existing permit limits (for example, by reduction in capacity or hours of operation) until the permit is revised.(17)

49. COMMENT: It is not unreasonable to require the use of DER credits for the period of time between the date the exceedance is documented and the date a new permit limit is approved. Furthermore, the Department needs to clarify its enforcement policy as it will relate to assessing penalties in addition to the cost of the DER credit use required by these provisions. (9)

RESPONSE to Comments 46 through 49: The Department has reconsidered the Class 3 Permit Insurance provisions proposed at N.J.A.C. 7:27-30.14(e)3, and has determined not to include them in the adopted amendments. As proposed, the proposed provisions included no definite time limit for how long DER credits could be used for compliance; therefore there was no assurance that this use of credits would result in the permit limit being met within a reasonable time. Also, the definition of “permit insurance” at N.J.A.C. 7:27-30.2 has been correspondingly amended, related provisions at N.J.A.C. 7:27-30.13(d)3iv and 30.14(j) have been deleted, and text at N.J.A.C. 7:27-30.13(d)3iv and v, which were proposed as 30.13(d)3v and vi, and text at 30.14(d)4 have been revised to reflect this change from proposal. Also, as this use of DER credits was not included in the adopted amendments, comment 49 is no longer relevant.

STACK TESTING DELAY - N.J.A.C. 7:27-8.3(l)1, 8.28, 22.3(vv)1, 22.18, 30.14(a)6

50. COMMENT: Two commenters objected to the proposed new mandatory requirements such as credit retirement for testing delays in addition to potential fines. The Blue Ribbon Panel had recommended against these except as optional uses. The Department has converted them to additional fines due to the mandatory requirements, thus converting a “voluntary” Open Market Emissions Trading system into punitive controls. The public has not received enough notice regarding these buried items. The Department should extend the comment period, and either not adopt these provisions or change the text to “may be allowed” to use credits. (1), (19)

RESPONSE: Open market trading can afford flexibility and compliance alternatives, which regulated entities can voluntarily elect to take advantage of. It can also enhance environmental protection, by asking that persons who do not meet their environmental obligations (or persons who elect options that increase the degree of uncertainty as to whether their environmental obligations are being met) compensate for this through use of credits. The requirement to use credits to compensate for stack testing delays is an example of enlisting open market trading to enhance

environmental protection. Such uses have been discussed since the concept of establishing an Open Market Emissions Trading Program was first considered, including with members of New Jersey's Open Market Emissions Trading (OMET) Workgroup at their monthly meetings. All members of the interested public were invited to participate in the OMET workgroup. Full public notice and opportunity to comment has also been provided through the Department's rulemaking procedures, conducted in full compliance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and the rules for agency rulemaking, N.J.A.C. 1:30.

51. COMMENT: The commenters do not agree that DER credit compensation should be required for testing delays, in addition to potential fines. Proposed paragraph 7:27-30.14(a)6 stipulates that, if a facility gets approval to delay testing and the permittee waives the right to assert that its emissions are different than measured or calculated emissions, then compensation will be required for emissions in excess of the permit limit. There could be a variety of valid reasons for delaying testing, and facilities should not be subject to the uncertainties of credit acquisition in addition to potential penalties. The requirement to purchase emission credits for delayed testing is especially punitive because it does not protect a facility from additional penalties and it subjects facilities to additional unknown costs. This requirement could put some facilities at the mercy of others by requiring facilities to acquire credits that may not be available or that may be available only at significant premium prices. This language should be removed entirely or it should not require a facility to retire its credits if the facility has already received Department approval for a testing delay and if the facility has not waived its rights regarding emission assertion. (3), (18)

RESPONSE: Facilities are responsible for complying with administrative requirements for emissions testing. The penalty code is an enforcement mechanism for holding companies to their obligation to meet administrative requirements. The new provisions proposed at N.J.A.C. 7:27-30.14(a)6 (and recodified on adoption at N.J.A.C. 7:27-30.14(a)5) are a supplementary mechanism to address the reality that untested sources may be emitting air contaminant emissions in amounts that are greater than their allowable limits, and these excess emissions may go on undetected due to a delay in testing. These new provisions require the owner or operator of a source to compensate with DER credits for actual excess emissions or for the possibility that there may be such excess emissions. To clarify that the DER credit obligation is separate from and independent of the enforceable obligation to meet the Department's administrative requirements for testing, the adopted amendments specify at N.J.A.C. 7:27-30.14(a)5 that the requirement to compensate with DER credits is in addition to the requirement to pay any penalty which may apply.

A permittee who delays required emissions testing need not be subject to civil administrative penalties. Only if the permittee allows the testing date to pass without obtaining an extension (of up to 90 days) from the Department would the permittee be subject to the applicable penalties set forth in the table of civil administrative penalties at N.J.A.C. 7:27A-3.10(m)8. And a permittee can continue to apply for and (for valid reason) obtain additional 90-day extensions beyond the initial 90-day extension, until such time as the testing is actually performed, and thereby continue to prevent the occurrence of a violation and the incurring of penalty liability.

Likewise, a permittee who delays required emissions testing need not be subject to the requirement to use DER credits. Only if testing is delayed more than 90 calendar days would the

permittee be subject to DER credit use requirements. And even then no compensation with DER credits would be required if the permittee meets certain conditions specified at N.J.A.C. 7:27-30.14(a)5i and source emissions testing confirms that the source is operating in compliance. The commenter's concern about the lack of credit availability is without merit since the generation of credits far exceeds the use of credits at the current time.

52. COMMENT: Why is N.J.A.C. 7:27-8.28(b) different from 22.18(k)? Can the Department make 8.28(b) match the level of detail and explanation provided in 22.18(k)? There needs to be consistency between sections 8.28(b), 22.28(k), and 30.14(a)6. (9)

RESPONSE: N.J.A.C. 7:27-8.28(a) and (b) correspond to N.J.A.C. 7:27-22.18(k) and (l) and are equivalent except that N.J.A.C. 7:27- 22.18(k) contains, as the commenter points out, significantly more detail than N.J.A.C. 7:27-8.28(a). The Department agrees with the commenter that both provisions should provide permittees equally detailed information. Therefore, in the adopted amendments the additional detail has been added to N.J.A.C. 7:27-8.28(a). Furthermore, N.J.A.C. 7:27- 22.18(k) has been recodified, with revisions, so that its structure corresponds to that of N.J.A.C. 7:27-8.28(a). Therefore the provisions proposed at N.J.A.C. 7:27-30.14(a)6 (and recodified on adoption at N.J.A.C. 7:27-30.14(a)5) can be applied equally in both cases.

53. COMMENT: Proposed N.J.A.C. 7:27-30.14(a)6 would require the use of DER credits for delays in stack testing. At N.J.A.C. 7:27-22.18(k)3 the proposal tries to define valid reasons for delays. Requiring DER credit use for stack testing delays is a viable incentive for sources to perform timely testing. However, one commenter suggested that the adopted language should protect facilities that have other valid reasons to delay testing, such as safety concerns, equipment malfunctions, start-up/shutdown periods, viability of test methods, intermittent operating schedules, and availability of testing equipment such as USEPA audit cylinders for Method 25 testing. Another commenter suggested that another possible valid reason is when it is to the mutual advantage of the applicant and the Department to delay testing. For example, combustion sources, which typically operate at or near full load at only certain times of the year, may fall into this category. Rather than force the dumping of steam by artificially increasing load, it is to everyone's benefit to delay such a test. (9), (10)

54. COMMENT: As part of the process for reviewing and taking action on a stack test extension request, the Department should evaluate the permittee's "ability to test." If a permittee is found "not able to test" due to one of the following valid reasons, the permittee should receive a stack test extension without required DER credit use: safety concerns, equipment malfunctions, the equipment is in a start-up/shutdown period, the test method is not viable, the equipment is not operating due to an intermittent operating schedule, or testing equipment (such as USEPA audit cylinders for Method 25 testing) is not available. If a permittee is found "able to test", (ie, none of the above reasons are present) the permittee may still obtain a stack test extension but will be required to use DER credits if excess emissions are demonstrated by the stack test. (9)

RESPONSE to comments 53 and 54: The Department agrees that there may be more valid reasons for delaying testing than those listed in the proposed amendments at N.J.A.C. 7:27- 22.18(k)6. But

rather than attempting to list all possible valid reasons for delay, the Department has, in the adopted amendments at N.J.A.C. 7:27-22.18(k)3, simply stated that it would approve any initial request for a delay up to 90 days that was submitted for any reason which the permittee finds valid. However, subsequent requests for further delays would be approved only if one of three criteria were met, and such further delayed testing would be subject to the DER credit use requirements at N.J.A.C. 7:27-30.14(a)5. Rather than adopting the three criteria as proposed at N.J.A.C. 7:27- 22.18(k)6, the Department has deleted the third proposed criteria. The Department does not believe that the necessity to operate equipment during the testing, at levels prescribed by the testing protocol, is sufficient reason to further delay testing. In place of this third criteria, the amended rule allows the Department to exercise its judgement as to whether there is some other impediment to the testing, which is a valid reason for further delaying the testing.

55. COMMENT: This provision would allow the Department to require DER credit purchase in the event of a delay in testing. The extent to which this will be required is not made clear in the regulations, which is a cause for concern over equity in treatment of permittees.

RESPONSE: N.J.A.C. 7:27-30.14(a) makes clear that use of credits to compensate for actual or potential excess emissions in the case of delay of testing is a required use, and not a use that is effected at the discretion of the Department. Therefore, the requirement for credit use in the case of delayed testing would apply to all permittees equally, and such use would be mandated under the circumstances specified at N.J.A.C. 7:27-30.14(a)5 (numbered as (a)6 in the proposal).

56. COMMENT: It is unclear as to whether this provision could apply to test events other than the initial compliance test (i.e., subsequent testing and/or periodic monitoring). Some delays in testing occur due to delays by the Department during protocol review or test scheduling. The commenter assumes that DER credit purchase provisions are not intended to apply under these circumstances. To clarify this, the commenter suggests amending proposed N.J.A.C. 7:27-30.14(a)6(iii) to read, "...if the delay is at the request of, or caused by, the Department." (10)

RESPONSE: The requirements for credit use in a case of delay of testing do apply to test events other than the initial compliance test. The amended rules at N.J.A.C. 7:27-8.28(a) and 22.18(k) specify the test events to which these apply. For permittees subject to subchapter 8, these are testing required by the Department before an operating certificate, or any renewal thereof, is approved pursuant to N.J.A.C. 7:27-7:27-8.4(f); testing required by the Department to ensure compliance with State and federal air pollution control requirements pursuant to N.J.A.C. 7:27-7:27-8.7(f); and testing required in a compliance plan pursuant to N.J.A.C. 7:27-7:27-8.13(d). For permittees subject to subchapter 22, these are testing required by the Department pursuant to N.J.A.C. 7:27-7:27-22.18 and to the operating permit, including both initial source emissions testing and periodic source emissions testing required in accordance with an applicable schedule in the operating permit.

57. COMMENT: The proposed rule would require facilities to compensate for testing delays with credits, even in situations where the agency has approved or contributed to the delay. This mandatory use is unwarranted. The Department should remove this section or prevent it from being mandatory and clarify the conditions that would constitute a Department-requested delay. (3)

RESPONSE: N.J.A.C. 7:27-30.14(a)5iii (codified as 6iii in the proposal) makes it clear that no compensation with DER credits is required if the delay of the testing is at the request of the Department. A delay would be considered to be at the request of the Department only under the following circumstances: the permittee has received approval of its permit, has submitted and received approval of the testing protocol, and has requested approval of a testing date that is within 180 days after the Department's approval of the permit; and, nonetheless, the Department requests that the facility delay its testing until more than 180 days after the date of permit approval.

58. COMMENT: Clarify the term, “timely testing” at proposed N.J.A.C. 7:27-8.3(l)1 by adding the phrase “pursuant to N.J.A.C. 7:27-8.28” after the word “apparatus.” Also, clarify the term “timely testing” at proposed N.J.A.C. 7:27-22.3(uu)1. (10)

RESPONSE: The Department agrees with the commenter that it would be useful to clarify the phrase “timely testing” which was used at proposed N.J.A.C. 7:27-8.3(l) and at subsection N.J.A.C. 7:27-22.3(uu)1. (Subsection 22.3(uu) was proposed as 22.3(vv) but was recodified at 22.3(uu) upon adoption.) The procedures for requesting a test delay are set forth at proposed section 8.28 and proposed subsection 22.18(k). Both proposed provisions refer to other parts of subchapter 8 and subchapter 22, respectively, which require testing to be performed according to a certain schedule. To clarify the phrase “timely testing,” in the adopted rules the Department amended subsection 8.3(l) to cross-reference section 8.28 and subsection 22.3(uu) to cross-reference subsection 22.18(k).

59. COMMENT: Could the Department, in proposed sections 8.28(b), 22.18(k), and proposed paragraph 30.14(a)6, clarify how the “waiver” is intended to be used by the Department and what advantage it provides for the permittee? (9)

RESPONSE: These provisions pertain to procedures for determining whether, and if so how many, DER credits must be used by a permittee, in a case where required testing has not been performed for the source at least by 90 days after the testing is due. In such case, a permittee has the option, pursuant to N.J.A.C. 7:8.28(b) or 22.18(l), to waive its right to assert that a source’s emissions during the period of delay were any different than the emissions measured by the test when performed (or, if applicable, the emissions calculated based on the measurements taken).

If a permittee signs such a waiver, the Department will have the assurance that the permittee will accept the test results as valid. For such permittees these amended rules at N.J.A.C. 7:30.14(a)5i provide a method for determining the number of DER credits based on the test results and guarantees them that if the test results show compliance the number of credits they will be required to use is zero.

If a permittee does not sign such a waiver, the Department has no assurance that the permittee will accept the test results as valid. Therefore, for such permittees, an alternative method for determining the number of credits to be used is provided at N.J.A.C. 7:30.14(a)5ii. This method does not rely on the test results, and it does not offer the possibility of needing to use zero credits if the testing does show compliance.

60. COMMENT: One commenter suggested that the proposed regulations regarding “use” would be punitive, and asked whether or not it would be acceptable to use a very conservative maximum emission rate along with an actual activity level to approximate the actual excess emissions? (8)

RESPONSE: The delayed testing provisions at proposed N.J.A.C. 7:27-30.14(a)6 (recodified upon adoption at N.J.A.C. 7:27-30.14(a)5) require that a permittee, subject to testing requirements that are not timely met, be responsible for excess emissions that may be occurring, but are not documented because the testing has not been performed. The amount of credits required is not intended to be punitive. In fact, if the permittee has accepted responsibility for its emissions by signing the waiver and the emissions measured by the test when performed show no exceedance of limits, then no credits would be required. Or if the testing shows that such a permittee is exceeding its limit, then the amount of credit compensation required would be based on the source’s actual measured emission rate and documented activity levels.

N.J.A.C. 7:27-8.3 General provisions

61. COMMENT: Proposed N.J.A.C. 7:27-8.3(l)2 would require a permittee to compensate for emissions through the use of DER credits if the permittee operates equipment for which the permittee has failed to install or operate a control apparatus required by a permit. The commenter believes mandatory use of emission credits is not appropriate and is unnecessarily punitive. By making these requirements mandatory, certain facilities would be at the mercy of other facilities to acquire credits that may not be available or only at significant premium prices. The Department should reconsider and remove this section or prevent it from being mandatory. (3)

RESPONSE: The adopted rules include the requirement, at both N.J.A.C. 7:27-8.3(l)2 and 22.3(uu)2, that a permittee to compensate through use of DER credits for operation of equipment, if the permittee has failed to install or operate a control apparatus required by a permit, and these requirements are reflected in the OMET rules at N.J.A.C. 7:27-30.14(a)6. The holding of a permit that requires the installation and operation of controls places an obligation on the permittee to ensure that the emission reductions to be obtained through the controls are in fact realized. If the permittee fails to utilize the controls specified in the permit, it is appropriate that the Department require the permittee to secure the emission reductions by other means, that is, through use of DER credits.

N.J.A.C. 7:27-8.4 Applications

See section above titled “Stack Testing Delay.”

N.J.A.C. 7:27-8.28 Delay of Testing

See section above titled “Stack Testing Delay”.

N.J.A.C. 7:27-18.11 Interface with other trading programs

62. COMMENT: The Department continues to restrict the use of emission reduction credits, generated under N.J.A.C. 7:27-18 (subchapter 18) from the shutdown of a facility, from being used in out-of-state trades. This will hamper credit supply development, and is more restrictive than other state emission trading programs. Again, the Department's proposal is not competitive with other state requirements and offered flexibility. Shutdown credits should be treated the same as all other emission reduction credits. (11)

RESPONSE: It is the Department's policy not to allow interstate trading of creditable emission reductions (CERs) generated from the shutdown or curtailment of a facility located in New Jersey. Given the restrictive nature of the offset provisions in Section 173 of the federal Clean Air Act, this is necessary to ensure that there will be adequate CERs available to enable the construction of new facilities, and major modifications of existing facilities, in New Jersey. Section 173 specifies that an owner or operator may obtain emission reductions, for use as offsets, from another nonattainment area only if the other area has an equal or higher nonattainment classification than the area in which the source is located. For New Jersey, the adjacent nonattainment areas have lower nonattainment classifications. Therefore CERs could be traded out to these areas, but no CERs could be traded from these areas into New Jersey. Such one-way trading could readily lead to a drain of New Jersey's banked CERs. Then New Jersey business and industry would not have access to the CERs they need for their own expansion.

63. COMMENT: When emission reductions banked for use as emission offsets under N.J.A.C. 7:27-18 are converted to DER credits, proposed N.J.A.C. 7:27-18.11(a)7 would require that any discount applicable under N.J.A.C. 7:27-18.8(e) be applied prior to the conversion. Proposed N.J.A.C. 7:27-18.11(b) appears to require the same thing. Are these two provisions duplicative, and if so, can one be eliminated? (20)

RESPONSE: The Department agrees that the two provisions are duplicative. Therefore, N.J.A.C. 7:27-18.11(a)7 has been deleted from the adopted amendments.

64. COMMENT: Proposed N.J.A.C. 7:27-18.11(a)8i would establish the formula for converting emission reductions banked for use as emission offsets under N.J.A.C. 7:27-18 into DER credits. To determine the baseline emission rate used in this calculation, the permit limit is not taken into account, unless it is required by state-of-the-art provisions of N.J.A.C. 7:27-8 or 22. In other words, a permit limit which is based on those state-of-the-art provisions can be the baseline emission rate. This approach perpetuates the "catch-22" which prevents a company from generating credits by installing new air pollution controls. Essentially any installation of control apparatus, even a completely voluntary one, will trigger the state-of-the-art requirements under N.J.S.A. 26:2C-9.2(c). As a result, the permit limit resulting from the installation will become the baseline for the calculation of credits generated. Using that baseline, the amount of credits generated will be zero. To avoid perpetuating the "catch-22," the recommendation is to delete the references to N.J.A.C. 7:27-8.12 and 22.35. (5), (20)

RESPONSE: The amended OMET rules address this commenter's concern at N.J.A.C. 7:27-30.5(d)1ii(B). These provisions state that, for any permit modified on or after June 6, 2000 to address changes made to implement a generation strategy, the permit limit that shall be taken into consideration in determining the source's lowest allowable emission rate is "the limit which applied prior to the issuance of the new or revised permit or operating certificate (and not the new limit)." Therefore new permit limits, which may be set based on SOTA determinations, will not impede credit generation. Since the amended rules at N.J.A.C. 7:27-18.11(a)7 state that for conversion of emission reductions under N.J.A.C. 7:27-18.8, the number of DER credits generated shall be calculated in accordance with N.J.A.C. 7:27-30.5, these provisions at N.J.A.C. 7:27-30.5(d)1 ii(B) also apply when emission reductions are being converted.

N.J.A.C. 7:27-19.2 Purpose, scope and applicability

65. COMMENT: Proposed N.J.A.C. 7:27-19.2(f)2 is being changed to reflect the conclusion of the ozone season as September 30. Has the Department evaluated the impact, if any, on previously submitted NO_x RACT plans? That is, have all facility-specific NO_x RACT plans been revised to reflect the September 30 date? (10)

RESPONSE: N.J.A.C. 7:27-19.2(f)2 sets forth the conditions under which the Department will exempt facilities from NO_x RACT requirements. Pursuant to this subsection, facilities must emit less than 137 pounds of NO_x each day during the summer ozone season to qualify for the exemption. These amendments extend by 15 days the period of time defined to be included in the ozone season. To date, the Department has approved over 40 exemptions from NO_x RACT requirements pursuant to N.J.A.C. 7:27-19.2(f). Therefore, these rule amendments will affect the owners and operators of the facilities exempted in these more than 40 cases, as well as the owners and operators of facilities who apply for the exemption after June 6, 2000, the operative date of these amendments.

The Department anticipates that, in most cases, the degree of impact will not be significant. If the emissions from a facility is less than 137 pounds of NO_x each day from May 1 through September 15, it seems reasonable to assume that its daily emissions, in most cases, will also be less than 137 pounds from September 16 through 30. And, to accommodate those facilities that must make changes in order to continue to qualify for an exemption, a new paragraph has been added upon adoption at N.J.A.C. 7:27-19.2(f)3, to establish that such facilities have up to 16 months from the operative date of these amendments to make these changes. (This is the same length of time owners and operators were allowed to come into compliance with the new NO_x RACT requirements, when Subchapter 19 was originally promulgated on January 23, 1994.)

The Department intends to notify the owners or operators of these exempted facilities of the amendments to N.J.A.C. 7:27-19.2(f)2, and to inform these owners or operators that the Department's approval of the exemption of their facilities is revoked unless the owner or operator confirms to the Department in writing the facility's daily NO_x emissions from September 16 through 30, beginning in 2000 and in each year thereafter, is less than 137 pounds. The Department will also inform the owner or operators that each facility that loses its exemption has until October 6, 2001 to achieve compliance with the applicable requirements in Subchapter 19. This will allow a facility

that will have 137 pounds or more of NO_x each day, as of June 6, 2000, up to 16 months to come into compliance.

As for facilities that have not previously been exempted, and for which NO_x RACT plans have been submitted and approved (except for the five companies complying in whole or in part under the emissions averaging provisions at N.J.A.C. 7:27-19.6), the amendments to N.J.A.C. 7:27-19 to redefine the length of the ozone season will not affect these facilities. NO_x RACT plans are not seasonal plans. The owners and operators of facilities with equipment and control apparatus that are subject to these NO_x RACT plans have to comply year round; a change in the defined length of the ozone season will not impact them.

Regarding the five companies with approved NO_x RACT plans that include emissions averaging, the amendments will require that they revise these plans. Their plans were approved with daily averaging periods from May 1 to September 15, and 30-day averaging periods from September 16 to April 30. The Department will notify the five companies of the adopted changes to N.J.A.C. 7:27-19.6(f), and inform these owners or operators that the Department's approval of their NO_x RACT plans is revoked, as of October 6, 2001, unless prior to that date the owners or operators amend their NO_x RACT plans to reflect that the daily averaging period is extended through September 30.

N.J.A.C. 7:27-19.23 Phased compliance - use of innovative control technology

66. COMMENT: The proposed revisions would require DER credit purchase for sources unable to meet NO_x emissions rates specified in an approved innovative control technology plan. Since these rates reflect greater control than the otherwise applicable RACT limit, requiring DER credits down to the lower innovative control limit unduly penalizes applicants who made a good faith effort to further reduce emissions. This commenter would recommend revising N.J.A.C. 7:27-19.23(e)10 to read, "... (as stated in (c)5v above) exceed the applicable, RACT level in the absence of an approved innovative control technology plan." (10)

RESPONSE: As a general requirement, combustion sources subject to the NO_x RACT requirements of N.J.A.C. 7:27-19 were required to meet the applicable limits by May 31, 1995. But if a permittee wanted to install innovative control technology and needed more time to do this, the Department would approve this under N.J.A.C. 7:27-19.23, provided that the source would achieve greater reductions than would have otherwise been required when the innovative controls were installed. By accepting an approval of delayed installation of controls, the permittee also accepted responsibility to achieve the lower emission levels. Therefore rule language at N.J.A.C. 7:27-19.23(e)10 has not been amended as the commenter recommends, and continues to read that compensation is required for any emissions above the level which would have resulted if the source had attained the lower rate of NO_x emissions given in its innovative control technology plan.

N.J.A.C. 7:27-19.24 MEG alerts

67. COMMENT: Proposed N.J.A.C. 7:27-19.24(c) would require an "electric generating utility" to use DER credits to compensate for emission increases during a MEG alert. The Department should revise this provision to apply to the "owner or operator of the electric generating unit," rather than to the electric generating utility, to reflect deregulation of the industry under the New Jersey Electric Discount and Energy Competition Act. Other rule provisions relevant to MEG alerts do not refer to utilities, so the suggested change would simply clarify the rule and eliminate a clear inconsistency. (20)

RESPONSE: In view of the fact that, as a result of the deregulation of the electrical industry, the owners and operators of electric generating units will no longer be the utilities, the adopted amendments include the changes at N.J.A.C. 7:27-19.24(c) recommended by the commenter. This change is intended to make clear that it is the owners and operators of the electric generating units who are responsible for the unit's emissions, not the regulated utilities (pursuant to the 1999 Electric Discount and Energy Competition Act, utilities are responsible for electricity transmission and distribution, but not generation). For consistency, similar changes have also been made in the adopted amendments at N.J.A.C. 7:27-19.22(e), 19.24(b), and 19.25(d).

N.J.A.C. 7:27-22.3 General provisions

See section above titled "Stack Testing Delay".

N.J.A.C. 7:27-22.18 Source emissions testing and monitoring

See section above titled "Stack Testing Delay".

N.J.A.C. 7:27-30.2 Definitions

68. COMMENT: Regarding the generation of GHG credits, the definition of "curtailment" should be changed to allow for slight deviations in annual economic output levels, maybe a 10-15 percent reduction of economic output without penalizing credit generation. (13)

RESPONSE: A reduction in economic output of 10 to 15 percent (or even one percent) is curtailment, whether or not the credits being generated are GHG credits or other types of DER credits. Accommodation for deviations in annual economic output levels is appropriately provided for in the method for computing the number of credits generated set forth at N.J.A.C. 7:27-30.5. The method ensures that the amount of emissions reductions credited is proportional to the source's economic output. Under this method a reduction of 10 to 15 percent in economic output between the baseline period and the generation period would result in a corresponding reduction in the amount of emissions reductions credited.

69. COMMENT: The commenter supports the Department's decision to add the term "DER credit" to the OMET rule to eliminate the current potential for confusion in using the single term "DER" to

describe two completely separate concepts -- the credit which is tradable in the OMET system (“DER credit” or “credit”), and the emission reductions on which such a credit is based. (20)

RESPONSE: The Department appreciates this comment in support of the rule proposal.

70. COMMENT: Regarding the generation of GHG credits, the current definition of “shutdown” is a disincentive to eliminating a mode of production. The definition of shutdown should focus on whether entire facilities are closed instead of whether specific sources are closed. (13)

RESPONSE: The OMET rule prohibits the generation of any DER credit from a shutdown. Throughout the OMET Program, the Department is seeking to encourage voluntary emission reductions, but not to provide incentives for diminishing economic activity in the State. Therefore the OMET rules define “shutdown” as applying to individual sources, as the Department does not want the opportunity for credit generation to be a motivation for shutting down even a single source.

71. COMMENT: “Surplus”. Please clarify the definition of the term “surplus”. Would GHG emission reductions, achieved by implementing a generation strategy to comply with a specific air quality regulation for another gas, such as NO_x, qualify for generating GHG DER credits, or would these GHG emission reductions be considered surplus? (13)

RESPONSE: Pursuant to N.J.A.C. 7:27-30.6, no credit may be claimed for an emission reduction that is required in order to comply with any of the following air pollution control requirements: a requirement in the Federal Clean Air Act, the New Jersey Air Pollution Control Act (N.J.S.A. 26:2C-1 et seq.) and any regulation, permit, operating certificate, or order pursuant thereto; any air quality emission limit or standard in any applicable law, regulation, permit, or order; or any SIP or Federal Implementation Plan. However, if reductions of a GHGs are achieved that are ancillary to a person’s making reductions of VOC or NO_x that are mandated by these requirements, credit may be claimed for the ancillary reductions of GHGs. Also, if the NO_x, VOC, or GHG emission reductions are realized as a consequence of complying with requirements other than the air pollution control requirements, credit may be claimed for the reductions.

72. COMMENT: As with the existing OMET rule, the proposed definition of the term “surplus” focuses on reductions that are not required by any limit or standard in any applicable state or federal law, regulation, permit, or order and not relied upon in a SIP, which the commenter supports for NO_x and VOC DER credits. The definition does not include reference to any county or municipal laws or regulations, nor to non-air requirements for energy efficiency, or use of renewable resources, for example. This may pose larger concerns in this proposed revision since GHG DER credits are also included in the open market program. The commenter supports the proposed definition of surplus at this time, but recommends that the Department remain sensitive to advances in the understanding of the implications of this definition as other regional, national and international forums add to the general understanding of GHG trading issues. The commenter recommends that the GHG Advisory Group continue to consider the adequacy of this definition. (20)

RESPONSE: The Department agrees that, in view of the emerging policies pertaining to GHG emissions, the Department may need to reconsider the definition of “surplus” in the future.

73. COMMENT: Several commenters objected to determining the "useful life" of replaced equipment based on the manufacturer's warranty. Most equipment outlasts its warranty by a significant margin, so that DER credit generation is severely and unnecessarily restricted. One commenter recommended making "standard industry information" the first criterion for assessing useful life. Another commenter noted that a warranty period does not relate to a piece of equipment's true "useful life" and that the concept of "industry average useful life" takes no account of a company's commitment to upkeep and maintenance. Thus, this DER credit generation limitation actually penalizes those who take preventative maintenance measures with respect to their control equipment. A third commenter objected that many control devices are designed by in-house personnel, and constructed on-site or through a general contractor. Warranties often are not associated with in-house designed equipment. Used excess equipment is often used on other on-site operations to reduce emissions. Pollution prevention techniques such as material substitution, and recycling may not involve installation of vendor-purchased equipment with a warranty. The proposal would not permit credit generation under these circumstances. (1), (5), (9), (10), (11)

74. COMMENT: A number of commenters stated that the term “useful life” is not well-defined, is hard to define or that the use of the definition could result in an unacceptably short period of credit generation. Equipment can continue to operate well after its true “useful life” has expired. (1), (3), (9), (19)

75. COMMENT: The commenter questioned the value of the three approaches for determining “useful life” proposed in the definition of this term at N.J.A.C. 7:27-30.2. The first approach sets "useful life" as the length of time set forth in a manufacturer's warranty. A warranty only establishes the period during which the manufacturer will repair or replace the equipment or control apparatus at no charge or for a reduced charge. There is no reason to believe that the length of the time that the manufacturer is willing to assume this burden is related in any way to the useful life of the equipment or control apparatus. The third approach sets "useful life" as the length of time over which the equipment or control apparatus is depreciated. No tax or accounting standards for depreciation are tailored to any particular item of equipment or control apparatus. Furthermore, under this approach tax law changes which allow accelerated depreciation or which slow depreciation would affect DER credit generation, even though such changes are rarely if ever based on changes in the useful life of equipment. Depreciation therefore has no relevance to the useful life of any equipment or control apparatus. Only the second approach, which is based on industry averages, has any relevance to actual useful life. Even industry averages, however, often do not accurately reflect the useful life of equipment or control apparatus, which frequently depends more on maintenance practices, and willingness to spend money on repairs as a unit ages. The ability to generate DER credits encourages the replacement of older, higher-emitting equipment with new, cleaner equipment. Limits on credit generation reduce the incentive for these replacements. The commenter suggests that the Department return to the approach in the existing rules, which does not depend on any fictitious estimate of the useful life of equipment. (20)

RESPONSE to Comments 73 thru 75: In response to these comments, the Department has reconsidered the proposed definition of the term “useful life.” In the amended OMET rule, the term “useful life” is used at N.J.A.C. 7:27-30.6(f) and 30.7(d)15. The function of the term “useful life” is to place a limit on the time period for which credits may be claimed for the replacement of equipment. Presumably as equipment ages it would at some point in time have to be replaced; after that point in time the replacement would be a functional necessity, not a voluntary action taken to reduce emissions. DER credits should not be able to be claimed after that point in time unless the equipment is replaced with even less polluting equipment. The commenters raised a number of concerns about the proposed methods for determining the duration of the useful life of equipment or control apparatus that is replaced. In view of these concerns, and in order to simplify the implementation of this rule, the definition of the term “useful life” at N.J.A.C. 7:27-30.2 does not include the proposed methods, but instead includes the presumptive determination that the useful life of equipment or control apparatus that is replaced ends five years after the replacement equipment or control apparatus commences to operate. Also, at N.J.A.C. 7:27-30.7(d)15, the requirement to include in a Notice of Generation the method used to determine the replaced source’s useful life has not been adopted since this requirement is no longer relevant.

N.J.A.C. 7:27-30.3 General provisions

76. COMMENT: The commenter sought clarification as to how the proposed rules will be applied to facilities that hold permits under Title V (N.J.A.C. 7:27-22). If under the OMET rules the generation and use of discrete emissions trading credits is determined separately for each emissions source, this may be in conflict with the Title V process, which also has a facility-wide aspect, and could lead to confusion. The commentor asked if the Department would apply the OMET rules in the same way to businesses that are subject to Title V permitting requirements. (6)

RESPONSE: The provisions of New Jersey’s operating permit rules (the State’s Title V rules) at N.J.A.C. 7:27-22.16 (j) state that an operating permit authorizes a permittee to comply through open market emissions trading pursuant to N.J.A.C. 7:27-30. And in the OMET rules at N.J.A.C. 7:27-30.14(c), the principle is established that a person may use VOC or NO_x credits to comply with any emissions limit established under New Jersey’s air pollution control code, unless the use is prohibited by federal or State law or is prohibited pursuant to the amended rules at N.J.A.C. 7:27-30.14(h) or (i). The emissions limit may apply to a single source, a group of sources, or to a facility as a whole. Given these provisions there should be no conflict between the OMET rules and the Title V process.

77. COMMENT: The Department should attach a property right to credits to prevent the Department or USEPA from being able to take away DER credits arbitrarily. (13)

RESPONSE: The Department disagrees with this comment. N.J.A.C. 7:27-30.3(a) states the Department’s policy is that “a credit does not constitute or convey a property right.” In the conduct of air pollution control policy, it may at some future time be appropriate for the Department or USEPA to curtail the viability of credits, such as by establishing a limit to a credit’s lifetime.

78. COMMENT: The commenter requests that if the Department is considering changing its position on credit life, it should provide an opportunity for the public to participate in evaluating this position. Neither the OMET Workgroup nor the Blue-Ribbon Panel recommended changes to the Department's current provision, and both groups as well as the public at large should be given an opportunity to discuss the issue with Department policymakers. (20)

RESPONSE: Should the Department consider changing the provisions of the OMET rule pertaining to credit life, the Department will consider this request for an opportunity for public input. In general, in developing the OMET rule, the Department has made it a practice to provide extensive opportunity for public participation.

N.J.A.C. 7:27-30.4 DER credit generation: general requirements

79. COMMENT: This proposal would establish rules that would be discouraging to credit generators. Instead of allowing the positive benefits of trading to accrue by supporting an active system, the Department has shown itself to be bound by the bureaucratic chains of the present system and has taken an antagonistic approach to trading. Instead of encouraging emission reductions, it seems to take every opportunity to disallow credit generation and make the process of verifying and registering more difficult. While the concern may be genuine, the results of the actions are not at all environmentally progressive in terms of the trading process. (8)

RESPONSE: The OMET rules create opportunities for persons who voluntarily reduce their emissions to obtain credit and for regulated entities to have alternative means for compliance. Use of these flexibilities, however, entails the responsibility to base credits only on qualifying emission reductions and to document the credit generation or use. No matter what the rule's requirements may be, some will believe that these responsibilities are too burdensome and therefore elect not to generate and use DER credits. However, while the Department is seeking encourage participation in the OMET program, it will do so only while ensuring that environmental protection is maintained.

80. COMMENT: Two commenters object to the requirement that the DER generator obtain any required air permit approvals before reducing air contaminant emissions and generating credits. This is inconsistent with New Jersey's environmental statutes and air quality regulations which allow the "at risk" construction and operation of environmentally beneficial projects prior to permit approval. All DER generation strategies are environmentally beneficial and therefore subject to New Jersey's "permit at risk" provisions. As such, this requirement conflicts with the intent and language of New Jersey's "permit at risk" statute and regulations, and could potentially slow environmentally beneficial projects. (5), (9)

RESPONSE: The commenters correctly point out that the "at-risk" provisions at N.J.S.A. 26:2C-9.3 and 4 and N.J.A.C. 7:27-8.25(a) allow a permit applicant to proceed to operate newly-installed pollution control equipment or implement pollution process modifications while the application is pending. The commenters also correctly point out that it would be inconsistent with these provisions to require a permit applicant who wants to generate DER credits to wait until the permit is approved to commence the generation period. Therefore, in the adopted amendments the Department has

included language at N.J.A.C. 7:27-30.4(d) to clarify that permit approval is not required prior to commencing the generation of DER credits, if the permit application is commencing to operate newly-installed pollution control equipment or implement pollution prevention process modifications under these “at risk” provisions. Also, the Department has added to N.J.A.C. 7:27-8.25(d), the clarification that if the Department does not approve the controls or pollution prevention process modifications that are proposed in the pending permit application the emissions reductions realized during the “at-risk” period may not be used as a basis for DER credit generation.

81. COMMENT: Proposed N.J.A.C. 7:27-30.4(b)1 would provide that the DER credits generated by a fuel reformulation shall be owned by the person or organization that implements the reformulation. However, proposed N.J.A.C. 7:27-30.6 lists various situations that would not be eligible for DER credit generation, and includes at N.J.A.C. 7:27-30.6(a)12 “a new product which has been distributed, stored or sold for use in New Jersey for less than one year prior to the first day of the generation period.” The proposal gives as the reason for delaying the eligibility of such credits is that “these sources would not have an historical baseline from which emissions are reduced.” The commenter expressed concern regarding the application of this principle to the generation of DER credits by the reformulation of gasoline through the use of specialized additives. Concerns regarding a baseline, should, in the case of reformulated gasoline, be adequately met by baseline information from the gasoline prior to the reformulation. The commenter asked that the Department clarify this point and confirm that a new gasoline formulation that offered lower emissions would be eligible for the generation of DER credits in New Jersey. (7)

RESPONSE: In the example given by the commenter, the generation strategy would be the reformulation of the gasoline, not the distribution, storage or sale for use of a new product (the additive). The generator would be the person reformulating the gasoline, not the manufacturer of the product. The requirement of N.J.A.C. 7:27-30.6(a)12 would be met if the gasoline has been sold for use in New Jersey for one year or more. As the commenter correctly suggests that, if the reformulation is being carried out through the addition of a new additive to gasoline, then the historical baseline emission rate should be the emission rate of the gasoline prior to the reformulation. This historical baseline emission rate would be used, in accordance with N.J.A.C. 7:27-30.5, to determine the number of DER credits generated through the use of the additive.

82. COMMENT: The proposed amendments do not seem to provide for credit generation for the installation of renewable energy sources such as solar energy products, unless it could be classified as energy efficiency. (8)

RESPONSE: A person may generate DER credits by installing new renewable energy technologies and generating electricity using these new installations, if the person can document that the use of the electricity thus generated displaced the use of electricity generated by one or more sources that resulted in greater emissions in New Jersey. That is, the electricity did not add to, increase, or supplement existing generation capacity, but instead replaced an equivalent portion of the existing generation capacity.

83. COMMENT: One commenter asked the Department to explain the difference between the "implementing a strategy" language used in the proposed text at N.J.A.C. 7:27-30.4(a)1 and the "take an action" language currently in the rule in describing what a person must do to generate DER credits. If the change substantively affects the requirements for generating DER credits, the Department should not only explain what it means by the change, but also provide the public with additional time to comment. (20)

RESPONSE: In the Phase 1 OMET rule, the rule language variously speaks of "applying a generation strategy," "taking an action to reduce the actual emission rate," and "taking an action to reduce actual emissions." In drafting the Phase 2 revisions, the Department wanted to use consistent terminology and elected to use the "implementing a strategy" language, cited by this commenter. This change was not meant to be substantive, but rather was meant as a precaution taken to avoid the confusion that can result from using different terms to convey the same meaning. However, in reviewing the rule in response to this comment, the Department has determined that the proposed language was not uniformly consistent and interchangeably used the terms "emission reduction strategy" and "generation strategy." To remedy this, changes were made in the definition of "batch" in N.J.A.C. 7:27-30.2 and at N.J.A.C. 7:27-30.4(a) and (d), 30.5(c), (d), and (g), 30.6(f), 30.7(d), 30.19(e) and 30.24(b), so that the term "generation strategy" is consistently used throughout the amended rules.

84. COMMENT: The rule would provide, at proposed N.J.A.C. 7:27-30.4(b)5 and elsewhere, that substitution of recycled materials for virgin materials can be a generation strategy. The commenter supports these changes, as they will provide added incentives that can help bolster recycling and the sale of products made from recycled materials. (20)

RESPONSE: The Department appreciates the commenter's support for this provision.

N.J.A.C. 7:27-30.5 DER credit generation: computation of credits

85. COMMENT: Three possible baseline determinations for GHG credit generation is too complex. This will discourage GHG credit generation. It would be better if the rule had one baseline determination for GHG credit generation. (13)

RESPONSE: In most, if not all, cases for GHG credit generation, only one of the three methods for determining baseline emissions will apply to GHG sources; that is the method for determining the source's adjusted historic emissions. The method for determining the source's allowable emissions will generally not apply because no emissions limits have been set for GHGs. The method for determining the source's measured emissions will generally not apply because it will not be technically feasible to measure the emission stream upstream of the point of application of the generation strategy. However, in response to this comment, the text of N.J.A.C. 7:27-30.5(d) has, in the adopted rule, been modified to more clearly indicate that a generator of any DER credit is not obligated to attempt to come up with some value for the generator source's allowable emissions and/or the generator source's measured emissions, if these cannot be determined. This would be the case for VOC credits and NO_x credits, as well as GHG credits.

86. COMMENT: Two commenters supported the new provisions at proposed N.J.A.C. 7:27-30.5(d)1ii that indicate it is not the Department's intent to establish a source's baseline as its new permit limit in cases where a DER generation strategy requires a new air permit with a lower limit. One commenter, however, suggested that the provisions of N.J.A.C. 7:27-30.5(d)1ii should be made retrospectively applicable, as well, to permits issued prior to the operative date of the OMET rule amendments. The commenter reasoned that since the Department never had the intent to require that the new air permit limit be used in determining a source's baseline, any correction or clarification made to resolve it should be available to all DER generators, regardless of the date they revised their permits. Extending this correction to all generators of DER credits should have no potential for environmental risk. If, however, the Department determines the potential for environmental risk is too high, the commenter asked the Department to provide the estimated environmental risk and an explanation of how that risk was derived. (9), (20)

RESPONSE: The Department appreciates the commenters' support of the provisions of N.J.A.C. 7:27-30.5(d)1ii. However, one commenter incorrectly assumed that the Department never intended to require that the new air permit limit be used in determining a source's baseline; in fact, prior to issuing this clarification the Department had not taken a position on the matter. The Department recognizes that this commenter recommended making these new provisions applicable to permits issued prior to the operative date of these amendments. However, new rules generally apply only prospectively, and it is this usual practice that the Department has followed in this case.

87. COMMENT: In proposed N.J.A.C. 7:27-30.5(e), clarify (by adding an effective date) the difference between the baseline period as determined by the current rule from the baseline period as determined by the proposed rule. With no clarification it will be confusing to verify DER credits. (9)

RESPONSE: The clarification requested by this commenter has been added at N.J.A.C. 7:27-30.7(a), 11(i), 15(a), and 16(a).

88. COMMENT: Two commenters objected to changing the baseline determination method. One commenter expressed concern that changing the baseline determination method could create confusion and foster uncertainty with respect to DER credits generated with the Stage One baseline determination method and asked why this change was proposed. Users, generators, and particularly verifiers will have to distinguish between DER credits generated based on the existing historic emissions calculations and those based on the proposed new methods. DER credit generators and users with consecutive generation or use periods that overlap the operative date of these amendments will have to revise their quantification protocols to update the historic emissions calculations. The amended rule should not be more stringent than the current one unless it provides a needed safeguard. Further, such a safeguard should be defined in the rule and implemented at a level consistent with other federal and State environmental regulations. One commenter did not recall any discussion of this issue during the stakeholder rule development process. The commenter questioned the basis for concluding that the existing method for determining baselines is inadequate and suggested that the Department go back to the existing rule language. (5), (9)

RESPONSE: The Department’s intent in amending the method for determining baseline at N.J.A.C. 7:27-30.5 was to clarify the method, not to change it or to make it more stringent. Fundamentally, the method remains the same in the amended rule as it was in the original rule. Rather it was the Department’s goal to provide clearer guidance, to clear up possibly confusing provisions, and to provide sufficiently thorough directions so as to enable consistency and replication to be achieved. The Department recognizes that sound quantification is an essential underpinning of an effective emissions trading program.

The amended rules include multiple clarifications, including a simpler statement of the basic formula for calculating the amount of emission reductions. It corrects any confusion that may have resulted from the terms “emission reductions” and “DERs” being used interchangeably in the Phase 1 rule. It breaks out the process of calculation into a more detailed sequence of steps, and explains whether and why the specific provisions apply. For example, the amended rule recognizes that the three alternative methods for calculating baseline set out in the Phase 1 rule at N.J.A.C. 7:27-30.5(b)2i apply only if the emission reduction strategy is reducing emissions at a stationary source. The amendments are phrased to acknowledge that these three methods would not necessarily apply in all cases, such as in the case where the emission reduction strategy is the reformulation of a consumer or commercial product. To give another example, the Phase 1 rule, at N.J.A.C. 7:27-30.5(b)2i, contains a complex list of directions indicating that in certain cases the rate of emission reductions calculated should be multiplied by the generator source’s activity during the generation period or the amount of time in the generation period, but the basis for these calculations is not given. In the amended rule, at N.J.A.C. 7:27-30.5(d)2, it is made clear that these adjustments apply only in the case of calculating historic emissions, and that the reason for the calculations is to adjust for any difference in economic output between the historic period and the generation period.

However, in considering the commenter’s suggestion that the Department go back to the Phase 1 rule language, the Department did conclude that in respect to the determination of historic baseline period at proposed N.J.A.C. 7:27-30.5(e) that it would be preferable, for simplicity, to revert to the “representative of normal source operation” language used in the Phase 1 OMET rule. In reaching this conclusion, the Department also took into consideration that “representative of normal source operation” language is also used in respect to determination of baselines in the emission offset rules at N.J.A.C. 7:27-18 and that it would be desirable for these two emissions trading rules to be conceptually consistent. Therefore in the amended rule this “representative of normal source operation” language has been restored. Furthermore, to simplify the determination of baseline, the emissions offset rule allows a “default” assumption that the two immediately preceding years are representative of normal source operation. A permittee is required to make an affirmative demonstration that the two years used as the historical baseline period are representative of normal source operation only if the permittee seeks to use two different years. The amended rules incorporate this procedural simplification at N.J.A.C. 7:27-30.5(e). A related deletion is made at N.J.A.C. 7:27-30.5(g), and related citation changes are made at N.J.A.C. 7:27-30.5(i)2, N.J.A.C. 7:27-30.7(d)14 and N.J.A.C. 7:27-31.6(a)3.

The commenters observed that any change to the calculation methods could result in confusion and uncertainty. To avoid this, the Department has included in the introductory text of this notice a section entitled “Applicability of Amended Quantification Requirements.” This section

informs generators, verifiers, users, and others as to when quantification performed under the Phase 1 rule may continue to stand, and when the guidance in the amended rules must be followed.

89. COMMENT: The proposed rule would require a generator of GHG credits to discount the number of credits generated if emission reductions at the generator source result in increased emissions from “one or more emission sources other than the generator source, located at the facility or offsite.” This implies that a company would have to prove that an increase in emissions of a GHG from one of its facilities, located anywhere in the United States or even abroad, is not related to a reduction in New Jersey. This is an impossible requirement. (13)

RESPONSE: It is the responsibility of a generator of GHG credits to consider if the emission reduction action that he/she undertook resulted in increased emissions from other sources, at the facility or anywhere else in the world, and to deduct these emission increases from the amount of emission reductions claimed. This does not mean that a company would have to prove that an increase in emissions of a GHG from one of its facilities, located anywhere in the United States or even abroad, is not related to a reduction in New Jersey. But it does mean that a company generating credits would have to think through the consequences of implementing the emission reduction strategy and account for resulting emission increases, whether they occur at the generating facility, at another facility owned by the generator, or anywhere else.

90. COMMENT: Proposed N.J.A.C. 7:27-30.5(i)3 would require that the quantity of DERs generated be reduced to the extent that any emission reductions have been relied on “to any degree” in the SIP. In contrast, the definition of “surplus” envisions that emission reductions either are or are not relied upon in the SIP. If the Department means something different when it uses different language in proposed paragraph 30.5(i)3 from the definition of “surplus”, then it would be helpful for the Department to explain the different meanings. If not, language in both provisions should be the same. (20)

RESPONSE: The Department agrees that the language at proposed N.J.A.C. 7:27-30.5(i)3 should correspond to the language in the definition of “surplus,” and has revised this paragraph (adopted as N.J.A.C. 7:27-30.5(h)3) accordingly.

N.J.A.C. 7:27-30.6 DER credit generation: limitations

91. COMMENT: Several commenters objected to the proposed prohibition of the conversion of emissions offset shutdown credits to DER credits. The Department should allow the transfer or conversion of offset shutdown credits to DER credits, which, by the Department’s estimate, represent 90 percent of the offset credits banked. Disallowing the use of shutdown credits only penalizes businesses which went to the expense of creating the offset credits in the first place. (1), (3), (19)

RESPONSE: There are several reasons that the Department prohibits emission reductions from the shutdown or curtailment of a facility from being converted into DER credits.

The OMET Program is designed to provide incentives for achieving environmentally cleaner operation. It is not a goal of the program to provide incentives for ceasing operation and lowering economic productivity. Therefore it would be inconsistent with the purposes of the program to allow offsets based on source shutdowns to be converted to DER credits.

Also, to allow the conversions of offset shutdown credits to DER credits would be inconsistent with USEPA's proposed policy. In its model Open Market Trading Rule (OMTR), the USEPA prohibited the generation of DER credits from shutdowns and curtailments. The USEPA reasoned that shutdowns generally result from depressed economic conditions, and represent reductions caused by economic forces, not by voluntary actions taken to additionally reduce the emissions such that less pollution is emitted for a given amount of production. The USEPA has also expressed concern that production curtailments driven by economic conditions could be used to generate DER credits, which could be used to offset higher emissions during full production boom periods. The USEPA therefore believes that allowing DER credits to be generated from shutdowns or curtailments could lead to higher emissions from sources using DER credits without real, additional reductions having been made by DER credit generators.

92. COMMENT: The commenter recommended that the Department clarify proposed N.J.A.C. 7:27-30.6(a)6, which would provide that an emission reduction accompanied by certain increases in HAP emissions cannot be the basis for generation of a DER credit. As proposed, N.J.A.C. 7:27-30.6(a)6 does not make it clear whether the unacceptable increases in HAP emissions render all reductions for the generation period ineligible, or just those reductions which occur simultaneously with the HAP increases. (20)

RESPONSE: Pursuant to N.J.A.C. 7:27-30.6(a)6, all emission reductions during a generation period would not be eligible for use as the basis for generation of DER credits, if the reductions are accompanied by an increase in emissions of one or more HAPs from a level below a referenced emission threshold to a level above the threshold level. As established in the Phase 1 OMET rule, the threshold level is given in Appendix 1 of N.J.A.C. 7:27-8 and is the level referred to therein as the "SOTA Threshold." To maintain consistent use of terms, the terminology "SOTA Threshold" has been added upon adoption to N.J.A.C. 7:27-30.6(a)6 (and to related language at N.J.A.C. 7:27-30.6(a)7 and N.J.A.C. 7:27-30.14(h)1 and 2). A "SOTA Threshold" is given in units of tons per year or pounds per year. To evaluate whether or not a SOTA threshold has been or would be exceeded, a generator shall assume that the rate of emissions of the HAP from the generator source during the generation period would be the rate of emissions for a full year; if this results in a projected annual amount of HAP emissions which would exceed the SOTA Threshold, all emission reductions during the generation period would be ineligible to be used as the basis for DER credits.

This requirement has been included in the rule to ensure the protection of air quality in the vicinity of a potential generation source. For example, a waste combustion source may consider modifying its combustion process to reduce NOx emissions to use as the basis for generating DER credits, but modification might cause dioxin emissions to increase to a level above the threshold. As another example, a chemical company may consider switching to different chemicals in their manufacturing process to reduce VOC emissions, but this might cause formation and emissions of HAPs above thresholds.

A similar requirement has also been included for DER use. A user shall assume that the rate of emissions of the HAP from a user source during the use period would be the rate of emissions for a full year, to evaluate whether or not a SOTA threshold has been or would be exceeded. If the annual amount of HAP emissions exceed a SOTA Threshold, DER credits may not be used. This requirement is found at N.J.A.C. 7:27-30.14(h)2.

93. COMMENT: The commenter supports the clarification at proposed N.J.A.C. 7:27-30.6(a)10 that a DER credit cannot be based on an emission reduction which is not a consequence of an action taken by the generator, but recommends that the Department delete the example of changes in the weather. It is clear in the current rule that when mild weather reduces electric demand and thus reduces the operation of an electric generating unit, DER credits cannot be based on the emission reductions attributable to that reduced operation, and that credit generation based on curtailments of operation is not permitted. In addition, the calculation of DER credit generation under the current rules would result in zero credits being generated when emission reductions are due to reduced operations resulting from mild weather. The use of the weather example will also make the DER credit generation and verification processes unnecessarily complex. For example, a generator or verifier could conclude that the weather during each day of the generation period must be evaluated to determine whether any portion of the emission reduction is attributable to weather changes. If the generator is using a historic baseline, the generator or verifier could conclude that the weather during each day of the generation period must be compared with the weather during each day of each of the baseline years, with any differences being quantified and reflected in the Notice of Generation. (20)

RESPONSE: The Department agrees that giving the weather as a specific example at N.J.A.C. 7:27-30.6(a)10 is not necessary, and could in some circumstances be confusing. Therefore, the adopted rule does not include weather as an example. Pursuant to adopted N.J.A.C. 7:27-30.6(a)10, a DER credit generation strategy may not be based on changes in the weather. For example, if a company uses air conditioners, and the summer temperature is cool compared to previous summers resulting in less energy use by the company to run the air conditioners, this would not count as a DER credit generation strategy. However, the amount of emission reductions claimed could be affected by the weather. For example, consider a company that implements a DER credit generation strategy by installing lower-energy use air conditioners resulting in less energy use by the company to run the air conditioners. In any given generation period, the amount of emission reductions would be directly related to the amount of cooled air the air conditioners produced (their economic output). If summers were warmer (and therefore more air conditioning is used), the emission reduction calculation would result in more emission reductions (and therefore the generation of a greater number of DER credits) because of this increased use of the air conditioners.

94. COMMENT: One commenter objected to the prohibition at N.J.A.C. 7:27-30.6(b)2 of the generation of VOC and NO_x credits from sources subject to RACT, for which RACT has not yet been established, as unnecessarily limiting potential program participants with no obvious benefit to the environment, and asked that the Department explain its concerns. (5)

RESPONSE: Without an applicable RACT emission limit, or an established source specific emission limit (SSEL), a baseline emission rate reflective of the RACT requirement can not be

determined. By relying only on historical actual emissions data, a source would not be accounting for the RACT requirements. To correct this deficiency, prior to generation of a VOC or NO_x credit, the owner or operator of a source must ensure that the source has met the RACT requirements by either complying with the applicable RACT emission limit or an established SSEL. By now, however, SSELs have been established for most, if not all, VOC and NO_x sources for which they are needed. Therefore the commenter may be correct in noting that this prohibition may be unnecessarily limiting potential program participation. Therefore, in response to this comment, the Department agrees to reconsider this prohibition when the OMET Program rules are subsequently amended.

95. COMMENT: One commenter asked the Department to update Appendix A, which lists the emissions included in the emissions inventory as of August 2, 1996, since proposed N.J.A.C. 7:27-30.6(b)4 references Appendix A. (20)

RESPONSE: N.J.A.C. 7:27-30.6(b)4 prohibits basing the generation of a VOC or NO_x credit on emission reductions from a generator source whose emissions are not in the Department's emissions inventories. In the Phase 1 OMET rule adopted which became operative on August 2, 1996, Paragraph 4 referred to Appendix A for a list of the emission source categories whose emissions are included in the emissions inventory. Appendix A had been included in the rule for informational purposes only. As this original Appendix A list is currently outdated, this appendix has been deleted from the adopted rule. A person seeking information about the emission source categories whose emissions are currently included in the emissions inventories may contact the Department's Bureau of Air Quality Planning at 609-984-3009. N.J.A.C. 7:27-30.6(b)4, upon adoption, has been changed to reflect the deletion of Appendix A. Also, in the adopted amendments at N.J.A.C. 7:27-30.6(b)4, the descriptive phrase "major point source" has been deleted to reflect that the Emissions Statement Program's annual emissions inventories include emissions not only from "major point sources," but from "minor point sources" (as these two terms are defined by the Emissions Statement Program) and area sources as well; and instead the explanatory phrase "the emission statement program rules at" has been added to clarify which emission inventory is being referenced. Also, upon adoption, the subsequent appendices to the rule have consequently been recodified, and the citations throughout the rule referencing these appendices have likewise been changed.

96. COMMENT: A number of commenters objected to proposed N.J.A.C. 7:27-30.6(e) because they said it was not properly reviewed by the Emissions Trading Workgroup or the Blue Ribbon Panel, that it would penalize companies which made good faith efforts to create the credits, and that it would be difficult to enforce. Furthermore, because DER credit revenue can serve to expedite environmentally beneficial projects by encouraging the replacement of a less efficient piece of equipment after its true useful life has expired, the generation of DER credits should not be limited to the useful life of the replaced equipment. The Department could actually accelerate replacement by allowing DER credit generation from replaced equipment. The commenters said the DEP should consider eliminating this prohibition or provide a detailed explanation how it will be implemented and enforced. (1), (3), (5), (9), (11), (19)

RESPONSE: Proposed subsection N.J.A.C. 7:27-30.6(e) (recodified upon adoption as N.J.A.C. 7:27-30.6(f)) should be considered together with the provisions at proposed N.J.A.C. 7:27-30.5(d)1ii. N.J.A.C. 7:27-30.5(d)1ii was included in the amended rules to address the concern of the Emissions Trading Workgroup and the Blue Ribbon Panel that permittees who replaced equipment or control apparatus in order to generate credits would not be able to generate any DER credits because of New Jersey's SOTA requirements. By allowing permittees to use their "old" actual emissions, rather than their "new" permit limit in determining baseline emissions, amended subsection N.J.A.C. 7:27-30.6(f) assures such permittees that they can generate credits for replacing the "old equipment." However, N.J.A.C. 7:27-30.6(f) also limits the time they may claim such credits to the remaining useful life of the equipment that was replaced. The Department does not agree with the commenter that it would be appropriate for such a generator to be able to claim credits after the replaced equipment's useful life has expired. To simplify the implementation and enforcement of these provisions, the definition of "useful life" has been revised upon adoption to specify that the "old" equipment's useful life shall be presumed to end five years from the date the new equipment or control apparatus commences to operate.

N.J.A.C. 7:27-30.7 DER credit generation: Notice of Generation

97. COMMENT: Proposed N.J.A.C. 7:27-30.7(d)10 would require including in a Notice of Generation information concerning increases in any Hazardous Air Pollutant (HAP) emissions, regardless of either the amount (de minimis or otherwise) or the location of the increase. The breadth of this requirement could make the revised regulations unattractive to potential generators. Because de minimis changes are by definition too small to cause concern or to accurately quantify, they should be excluded. Additionally, only HAP increases at the generator source(s) should be the focus of the reporting requirement. (14)

RESPONSE: The Department has a responsibility to ensure that sufficient information is available to the public, so that citizens living or working in proximity to sources that generate or use credits may be assured that their environmental protection is not compromised as a result.

The OMET rule does not allow the generation or use of DER credits if significant increases in HAP emissions will result. First, at N.J.A.C. 7:27-30.6(a)6 and 30.14(h)1, the OMET rule prohibits the generation or use, respectively, of DER credits, if the generation or use would be accompanied by an increase in emission of a HAP from a level below the SOTA threshold to a level above the SOTA threshold. (The SOTA thresholds referred to above are the de minimis amounts to which the commenter referred.) And secondly, at N.J.A.C. 7:27-30.6(a)7 and 30.14(h)2, the OMET rule prohibits the generation or use, respectively, of DER credits, if the generation or use would be accompanied by an increase in emission of a HAP from a level that already exceeds the SOTA threshold to a higher level.

The commenter has asserted that de minimis changes are too small to cause concern. The Department does not agree that this is always the case. Therefore, at N.J.A.C. 7:27-30.7(d)10, 30.15(d)8, and 30.16(b)4, the OMET rule requires generators or users to disclose in the notices they file the amount of any associated HAP increase, even though this amount is less than the de minimis level. These notices are publicly available pursuant to N.J.A.C. 7:27-30.23 and are on the OMET Program webset at www.omet.com. This allows any concerned person to know whether or not there

may be HAP increases associated with trading. And, if there are small increases, this allows any concerned person to raise the matter to the generator or user who may explain why these amounts are too small to be of concern or who may explain why the benefits realized through the generation or use of the credits outweigh the concerns. This obligation to disclose all HAPs increases may deter some persons from participating in trading, but it is a condition that is essential for the public to have confidence that trading will not adversely affect their well-being. This is equally true, for both credit generation and credit use. Also, just as N.J.A.C. 7:27-30.7(d)10 requires including in a Notice of Generation information concerning increases in any HAP emissions, regardless of whether the increase occurred at the facility or off-site, the same clarification, regarding the location of the increase occurring at the facility or off-site, has been added to the adopted rule at N.J.A.C. 7:27-30.15(d)8 pertaining to a Notice of Use.

98. COMMENT: The requirement at proposed N.J.A.C. 7:27-30.7(d)12, that the Notice of Generation include "a showing that the emission reductions are not the result of the implementation of a regionally significant highway project or regionally significant transit project," should be limited to mobile source generating strategies. (20)

RESPONSE: The amended rules at N.J.A.C. 7:27-30.7(d)12, as adopted, clarify that the requirement for a showing in the Notice of Generation "that the emission reductions are not the result of the implementation of a regionally significant highway project or regionally significant transit project," is limited to highway and transit projects.

99. COMMENT: As proposed, N.J.A.C. 7:27-30.7(d)16 would add a requirement that the generator must submit to the registry the supporting information required by the quantification protocol. For many generation strategies, the supporting documentation will include competitive information that needs to be protected as a trade secret. This lack of confidentiality will strongly discourage the generation of DER credits and the development of innovative strategies to reduce emissions. The Department's confidentiality rules do not cover this situation because they apply only to information required to be submitted to the Department, not to information required to be submitted to a third party. Was this problem considered? The Department should either delete N.J.A.C. 7:27-30.7(d)16, or revise it to require only a summary of the supporting documentation. (13), (20)

RESPONSE: In developing the OMET Program, the Department considered the issue of confidentiality but determined full public disclosure to be an underlying principle of the OMET Program. This would include not only emissions information, but also all information required to document the generation of credits. The Department recognizes that the decision by an emissions source to generate DER credits is completely voluntary. Therefore, if an emissions source does not wish to disclose certain supporting information, the source simply may choose not to generate DER credits. The Department recognizes that this may deter some potential generators from generating credits. However, it was the judgment of the Department that openness in the trading program was more important than encouraging the participation of persons who choose not to disclose underlying information. Therefore, paragraph 7:27-30.7(d)16 is adopted as proposed.

N.J.A.C. 7:27-30.8 Registry

100. COMMENT: The cost of recording GHG credits on the registry is just one example of how the operation of the registry can strongly influence the health of the trading market. The Department should seek public input about registry operations before making a decision on the next steps to be taken when the current registry contract expires, and certainly before reaching an agreement to expand the existing registry to cover other states. (1), (20)

RESPONSE: When it becomes time to determine the next steps to be taken when the current registry contract expires, and if the Department should contemplate entering into an agreement to expand the existing registry to cover other states, the Department will take into consideration this recommendation to seek public comment.

101. COMMENT: The commenter found the requirement, at proposed N.J.A.C. 7:27-30.8(g), that the registry operator remove all designations of credits as "verified" or "unverified" if the Department or the EPA finds a verification defective, to be too broad. If a generator has had a valid verification completed, but a user or third party has a separate verification performed and that verification turns out to be invalid, the status of the credits as "verified" should not change. The rules should provide that the defective Notice of Verification be removed from the registry, but the credits should remain "verified" based on the one valid verification. (20)

RESPONSE: The Department agrees with the commenter that if the registry contains more than one Notice of Verification that verifies a batch of DER credits, and one of those notices is found to be defective by the Department or EPA, the designation in the registry, as to whether the credits in the batch are verified or not verified, will be based on the remaining valid Notice of Verification. For example, if there are two Notices of Verification in the registry which consider and verify all the credits in the same batch of credits, and the Department or EPA finds one notice defective, the "verified" designation on the registry will remain for all the credits in that batch because there is still a valid Notice of Verification which verifies all the credits in that batch. As a second example, if there are two Notices of Verification in the registry, and one notice finds that all the credits in the batch are verifiable whereas the other notice finds that only some of the credits in the batch are verifiable, and the Department or EPA finds the notice that verifies all the credits in the batch defective, those credits that are verified by the other notice will still be considered verified. However, if there is only one Notice of Verification on the registry that verifies all the credits in a batch, and the Department or EPA finds that notice defective, since no other Notice of Verification is on the registry for that batch of credits, the credits will revert to being considered to have not undergone a verification, and on the registry the credits will no longer be designated as verified or not verified. The Department clarified this upon adoption at N.J.A.C. 7:27-30.8(g).

N.J.A.C. 7:27-30.9 DER credit transfer

102. COMMENT: A number of commenters objected to the requirement at proposed N.J.A.C. 7:27-30.9 that all background documentation be submitted to the registry with the Notice of Generation. This violates confidentiality requirements of businesses and seems unnecessary since

the Department does not certify credits. The likely result is that no one will use the program as the regulation is currently proposed. (1), (3), (19)

RESPONSE: As explained in the Response to Comment 99, the Department determined the principal of full public disclosure to outweigh that of confidentiality in the OMET program.

103. COMMENT: One commenter suggested that the transferee, and not the transferor, should be required to submit the Notice of Transfer to the registry. The transferee, who wants to ensure the submission and recording of the Notice of Transfer, would thus not have to hound the transferor to ensure that this has been done properly. (20)

RESPONSE: The Phase 1 OMET rule required the transferee (not the transferor) to submit the Notice of Transfer to the registry. The Department accepts this commenter's suggestion that this responsibility should remain with the transferee, and has accordingly reflected this in the amended rule at N.J.A.C. 7:27-30.9(a).

N.J.A.C. 7:27-30.10 DER credit verification

104. COMMENT: One commenter supported the provision at N.J.A.C. 7:27-30.10(a)3, which would allow credits to be verified by other states' air pollution control agencies, and asked that a list of states authorized to verify credits be added to the rule as an appendix, and updated as new interstate agreements are executed. (20)

RESPONSE: The Department appreciates the support of the commenter for the provision at N.J.A.C. 7:27-30.10(a)3. However, at this time the Department has not entered into any interstate agreement which would allow DER credits generated in the other state to be verified by the other state's air pollution control agency.

105. COMMENT: Two commenters objected to the proposed provisions at N.J.A.C. 7:27-30.10(b) regarding the independence of the verifier as unnecessary, over-restrictive and more complex than needed. These provisions would also prevent business from paying verifiers. (1), (3)

RESPONSE: A generator needs to have the ability to employ a verifier and to direct the verifier to perform a verification in accordance with the OMET rules. However a generator should not have the ability to direct the verifier's performance of the verification or to influence the findings made by the verifier. In the amended rule, N.J.A.C. 7:27-30.10(b) has been modified to clarify the extent to which a generator may direct a verifier.

106. COMMENT: One commenter objected that the proposed verifier independence requirements at N.J.A.C. 7:27-30.10(b)3 and 4 would complicate the selection of a verifier because the concept of being "subject to the control or direction" is vague, undefined, and potentially very broad. For example, when a generator retains an engineer to verify a batch of credits, that generator gains some

ability to "direct" the engineer's work simply by paying him or her - thus automatically rendering the engineer ineligible to perform the verification. The rule currently provides a meaningful and appropriate level of confidence in the integrity of the verifier without the need for additional complex tests of the verifier's independence. The verifier must be either a New Jersey-licensed professional engineer or certified public accountant licensed in New Jersey; a biased and incorrect verification can potentially put such a professional's license at risk, and subject the verifier to a perjury prosecution for making a false certification. Unless the Department has experienced a problem in which some type of "control" or "direction" on the part of a generator compromised the impartiality of a verifier and resulted in an incorrect verification, this commenter recommends that these additional requirements be removed. (20)

RESPONSE: The verifier's role is essential to the OMET program's credibility. Independence between the verifiers and other program participants is critical. Accordingly, use of the term "control" as a measure of the absence of independence has been retained by the Department at N.J.A.C. 7:27-30.10(b)3 and 4. The Department will rely on the commonly-understood notion of "control" reflecting the power or authority to exercise a restraining or directing influence over the subject of control, thereby providing both adequate guidance to the regulated community and credibility to DER credit verification. Since this meaning incorporates the concept of the term "direction," the term "direction" has been deleted from proposed N.J.A.C. 7:27-30.10(b)3 and 4 upon adoption.

107. COMMENT: A number of commenters objected that proposed N.J.A.C. 7:27-30.10(c)2 will make verifications drastically more difficult and expensive, severely constraining the market. One commenter asserted that this would be unnecessary, would unduly burden the verification process and might drive up the price of verification projects, possibly curtailing generation, and might dissuade verifiers from conducting such projects. Another commenter found this increased burden to be unnecessary in light of the requirements that the verifier be certified by the appropriate New Jersey authority. A verifier currently must make a diligent inquiry, not limited to relying on the generator's representations, before verifying a credit. Without explaining the need for this, the rule would now require the verifier to certify that the notice and all of the supporting documentation is true, accurate, and complete--even when the verifier prepared none of these documents, and has no ability to direct or control the preparation of the documents. This presents a practical impossibility. The verifier would have to disprove a negative: that the generator has not omitted any information potentially relevant to the generation. The current requirement is far more realistic and does provide certainty that DER credits are valid. Professional engineers and certified public accountants may not be willing to jeopardize their licenses by making the certification which the proposed amendments would require. (4), (5), (9), (20)

RESPONSE: After taking these comments into consideration, the Department has modified the language in the adopted amendments to read that the finding to be made by the verifier is that the notice appears on its face to be true, accurate, and complete. This is a finding that the verifier should reasonably be able to make for a properly prepared notice.

108. COMMENT: Proposed N.J.A.C. 7:27-30.10(e)2 would require identification of the serial numbers for the DER credits verified. Currently the Notice of Verification is routinely submitted simultaneously with the Notice of Generation, in order to minimize revisions and adjustments to the submittals subsequent to the verification process. In addition, serial numbers are commonly not assigned for the credits until a number of weeks after submission of the Notice of Generation. The Notice of Verification states that serial numbers for the credits verified have not yet been assigned. The commenter asked whether this process will still be acceptable under the proposed regulations. (14)

RESPONSE: Pursuant to N.J.A.C. 7:27-30.8(e)1 and 2, as amended herein, the registry operator is required to assign serial numbers to the DER credits included in a complete Notice of Generation within two business days of the submittal of the notice. A generator should withhold submitting a Notice of Verification until the serial numbers have been assigned so that he or she may submit a complete Notice of Verification.

109. COMMENT: Proposed N.J.A.C. 7:27-30.10(e)4ii contains an incorrect cross-reference to N.J.A.C. 7:27-30.10(d), instead of to N.J.A.C. 7:27-30.10(b). (20)

RESPONSE: The Department appreciates the commenter identifying this error and has corrected the reference in the adopted amendments.

110. COMMENT: Proposed 7:27-30.10(e)6 would require detailed descriptions of any “fiduciary relationship(s) (current, prospective, or which have existed in the previous five years) between the verifier, and also the verifier’s employer,” and a variety of other persons. This will complicate the completion of verification notices because it requires expertise in determining what a “fiduciary relationship” is, in performing historical reviews of “fiduciary relationships”, and in predicting future “fiduciary relationships”. This additional complexity is unjustified, potentially meaningless, does not provide additional justifiable safeguards, interferes with confidentiality, and makes the verification process so complex as to confuse and inhibit the average business operation. It should be deleted. The Department should use the current rule language regarding verifier independence. (1), (5), (9), (20)

RESPONSE: The Department agrees that the requirements for independence of the verifier in N.J.A.C. 7:27-30.10(b) are sufficient and that the additional fiduciary disclosure requirements at N.J.A.C. 7:27-30.10(e)6 would complicate and burden the verification process. Therefore the Department has not included proposed N.J.A.C. 7:27-30.10(e)6 in the adopted amendments.

111. COMMENT: One commenter asked whether the term "fiduciary relationship," as used in proposed N.J.A.C. 7:27-30.10(e)6, would include the common practice whereby one public company unknowingly owns another public company through, for example, shares of a mutual fund. (14)

RESPONSE: The Department has removed the requirement for disclosure of fiduciary relationships in the amended rules; therefore questions as to how it shall be defined need not be taken up.

N.J.A.C. 7:27-30.12 VOC and NO_x credit use: general requirements

112. COMMENT: The enabling statute for the emission trading rule states: “The rules and regulations shall establish criteria for the generation and use of emissions reduction credits, ... and shall require that 10 percent of the emissions reduction credits gained shall be permanently retired for the public benefit when a trade occurs.” The Department should set the retirement percentage in proposed 7:27-30.12(h) to be consistent with the statutory requirement of 10 percent. (3)

RESPONSE: For most uses of DER credits, the OMET rule at N.J.A.C. 7:27-30.12(h) requires that 10 percent of the credits used be retired for the benefit of the environment. However, in the case of the permit insurance uses set forth at N.J.A.C. 7:27-30.14(d) and (e) this amount is 20 percent. The permit insurance uses allow a greater degree of flexibility for a permittee; therefore, to provide additional certainty that the protection of health, welfare, and the environment is sustained, the rule requires that a larger percentage of the credits used be retired for the benefit of the environment. One could think of this as retiring 10 percent of the credits for the benefit of the environment and another 10 percent to provide this additional certainty. In this way the rule balances the value of flexibility for regulated entities with the need to ensure that environmental protection is maintained.

113. COMMENT: One commenter supported the proposed provision of N.J.A.C. 7:27-30.12(j) which would permit a user to trade, voluntarily retire or use surplus credits because it would allow insurance credits which are not used to be later traded, retired or used for another application. The commenter recommended that subsection (j) clarify that there is no specific time period within which a DER credit held for use must be traded, retired or used. (18)

RESPONSE: N.J.A.C. 7:27-30.14(d)5 requires that the full number of credits required to be held for a permit insurance use in fact be used for that specific use; consequently there would be no leftover credits to be later traded, retired or used for another purpose. This was clarified at N.J.A.C. 7:27-30.12(j) in the adopted rule. However, for other types of uses, some credits may be leftover. Although the rule does not explicitly state that there is no specific time period within which a DER credit held for use must be traded, retired or used, the amended rule imposes no limit on the time during which such leftover credits (or any credits) must be used. Allowing an unlimited lifetime for DER credits is not necessarily characteristic of open market trading programs. The State of Michigan, for example, has a five-year lifetime for its discrete credits. But, to date, New Jersey’s program has no such provision.

114. COMMENT: One commenter objected to the requirement proposed at N.J.A.C. 7:27-30.12(l) that a user’s credits which have been registered as verified, must be replaced solely on the finding of deficiency of a second verifier. This begs the question of whether one verifier has the ability to overturn the validity of credits originally verified by another party. In such instances, the commenter recommends having an appeals procedure to handle what may be perceived to be a grievance or a simple difference of opinion. (5)

RESPONSE: N.J.A.C. 7:27-30.12(l) applies only when all of the Notices of Verification for a given DER credit are rendered invalid pursuant to subsections 30.10(f) or (h), not when a subsequent

Notice of Verification is submitted which contains different findings than the initial Notice of Verification. The Department clarified this in N.J.A.C. 7:27-30.12(l), as adopted. Subsection 30.10(f) states that a verification is invalid if a generator makes a substantive change to the Notice of Generation on which the Notice of Verification is based. Subsection 30.10(h) states that a verification can be invalidated by DEP or EPA. Therefore, it is not necessary for a user to replace credits unless one of these two situations has occurred. If a second or third Notice of Verification is submitted to the registry and the findings in those subsequent verifications do not coincide with the initial Notice of Verification, the user is not required to take the actions set forth at paragraphs 30.12(l)1 and 2. Also, the language at subsection 30.10(g) supports the concept of multiple verifications: “Any person may have a batch of DER credits verified, even if the batch has already been verified. Therefore, the registry may reflect more than one Notice of Verification for a single batch of DER credits.”

115. COMMENT: Proposed N.J.A.C. 7:27-30.12(l), which provides that the user must either have a new Notice of Verification submitted or replace a DER credit if the verification of the DER credit is rendered invalid after the credit is used, is too broad. A user should not be required to do this as long as one valid verification of the credit remains on the registry. This obligation should be imposed only if the Department or the EPA finds all existing verifications of the credit to be invalid. (20)

RESPONSE: The Department acknowledges the commenter’s reasoning that if the registry contains more than one Notice of Verification that verifies a given DER credit, and only one of those notices is invalidated pursuant to proposed N.J.A.C. 7:27-30.10(f) or (h), the user need not take the actions set forth at proposed paragraphs 30.12(l)1 and 2 because there is still a valid Notice(s) of Verification which verifies that credit. However, if there is no other valid Notice of Verification that verifies a particular credit, the user of that credit must take the actions required at proposed paragraphs 30.12(l)1 and 2. The Department clarified this upon adoption at N.J.A.C. 7:27-30.12(l).

N.J.A.C. 7:27-30.13 VOC and NO_x credit use: computation of DER credits

116. COMMENT: Proposed N.J.A.C. 7:27-30.13(b)1 addresses the quantification of the number of DER credits that need to be held when a Notice of Intent to Use is submitted. In the equation, the term “T” is defined as the “amount of time in the use period.” The commenter asked whether this term refers to the amount of time the equipment is allowed to operate or if it is the actual amount of clock time (for example, 24 hours/day, 7 days/week) during the use period. The commenter suggested the former, particularly if the source has a potential to emit limitation as defined at N.J.A.C. 7:27-22.1. The commenter asked for justification if “T” refers to clock time during the use period. (9)

RESPONSE: This commenter is correct in suggesting that, for the equation at N.J.A.C. 7:27-30.13(b)1, “T” should be defined as the maximum amount of time the equipment or control apparatus is allowed to operate within the use period. This amount would be the maximum time the equipment or control apparatus is allowed to operate under its currently effective permit, as the

“permit insurance” provisions of the amended rule make no provision for any increase in this maximum time of operation. This clarification has been incorporated in the amended rule.

117. COMMENT: Proposed N.J.A.C. 7:27-30.13(b)3ii contains a cross-reference to N.J.A.C. 7:27-30.15(b)3iii, a provision which is not found in the rule. Similarly, proposed N.J.A.C. 7:27-30.13(b)3iii contains a cross-reference to N.J.A.C. 7:27-30.12(i)3, which also is not found in the rule. Instead of correcting the cross-references, the Department should make the provision easier to read by specifying in these provisions the multipliers to be used when a user files a late Notice of Intent to Use or fails to hold sufficient DER credits before filing the Notice of Use. (20)

RESPONSE: In the amended rule the Department has corrected the cross-referencing errors identified by this commenter. These references have been retained in the amended rule, rather than being replaced by multipliers as suggested by the commenter, since the referenced text not only provide the multipliers but also spell out the conditions under which they apply.

118. COMMENT: Proposed N.J.A.C. 7:27-30.13(d) would establish a formula for calculating the quantity of emissions that need to be compensated for by the use of DER credits. The proposed formula eliminates one possible way in which DER credit use might not compensate fully for excess emissions. The formula in the existing rule would allow the user to reduce the quantity of credits needed for compliance if, at any time during the use period, the user source's actual emissions dipped below its allowable emissions. Preventing this possibility, however, results in a consequence to which two commenters objected. When a user source's actual emissions fluctuate above and below allowable levels repeatedly during the use period, the user must perform a potentially large number of calculations for a potentially large number of intervals within the use period. This adds to the burden of using credits, and will discourage some uses. This will also burden the Department in its efforts to enforce the rule, by forcing enforcement staff to review these calculations to verify compliance. This additional strain on the Department's enforcement resources makes the overall enforcement effort less effective and helps undermine the credibility of the program. One commenter, therefore, recommends that the Department return to the simpler formula in the existing rules. (8), (20)

RESPONSE: It is a user's responsibility to compensate for its excess emissions. The formula in the Phase 1 rule was flawed because it allowed a user to average its emissions during the use period. Under that formula, a user that exceeded an emission limit during the use period but which, on the average, had emissions below the limit, would not have had to “pay” any credits to compensate for its exceedances. The revised formula, which has been retained in the adopted rule, corrects this, and would result in the user having to compensate for all of its exceedances of the emission limit.

N.J.A.C. 7:27-30.14 DER credit use: required, authorized and prohibited uses

119. COMMENT: Two commenters raised concerns that the mandatory DER credit uses proposed in N.J.A.C. 7:27-30.14(a) could cause a dwindling of DER credit supply. The inability to transform

NO_x Budget allowances into DER credits may create a DER credit shortage. What if the market is functioning well but there are no DER credits to purchase? (3), (8)

RESPONSE: The Department does not believe that the proposed amendments to N.J.A.C. 30.14(a) will cause a dwindling credit supply. A review of credit generation and use during the three year history of the OMET Program shows that about 10 times as many DER credits have been generated as have been used. Furthermore, a rise in demand for DER credits can be anticipated to raise their value, which in turn would provide an incentive for more credits to be generated. The commenters are also mistaken concerning the conversion of NO_x Budget allowances into DER credits; this is allowed under N.J.A.C. 7:27-30.27.

120. COMMENT: Proposed N.J.A.C. 7:27-30.14(a)7 would make it mandatory to purchase DER credits when there is an exceedance of VOC or NO_x emissions in addition to the payment of possible penalties. This could double or triple the penalty to users. The cost is too high. One commenter preferred the current rules, which allow for the optional use of purchasing DER credits to resolve or reduce penalties. One commenter suggested that the Department clarify its enforcement policy as it will relate to assessing penalties in addition to the cost of the DER credit use required by this provision. (9)

RESPONSE: The current rules at N.J.A.C. 7:27A-3.10(i), which allow the Department to accept DER credits in full or partial settlement of a monetary penalty, remain in place. What the provisions proposed at N.J.A.C. 7:27-30.14(a)6 and 7 (and adopted as N.J.A.C. 7:27-30.14(a)5 and 6 respectively) do is add the responsibility for permittees to compensate for excess VOC or NO_x emissions due to delay of testing or operation of equipment without required emissions controls. The Department has found that, in such cases, it is appropriate that permittees not only be responsible for meeting their compliance requirements but also for compensating for excess emissions that may be released due to their actions.

121. COMMENT: Proposed N.J.A.C. 7:27-30.14(a)7 would require DER credit use to compensate for emissions above permitted allowable emissions rates when a permittee has failed to install or properly operate an air pollution control device. The commenter suggested that the Department adopt language to clarify that these requirements only pertain to OMET pollutants (VOC and NO_x). (9)

RESPONSE: As recommended by the commenter, the proposed text at N.J.A.C. 7:27-30.14(a)6 (proposed paragraph 7 was recodified upon adoption as paragraph 6) has been revised upon adoption to make clear that it is exceedance of a VOC or NO_x permit limit that would require DER credit use.

122. COMMENT: Why does proposed N.J.A.C. 7:27-30.14(a)7 only pertain to air pollution control devices and not to emission sources (which may be uncontrolled) that are not functioning properly and causing emission exceedances? (9)

RESPONSE: This recommendation for broadening the mandatory uses to include compensation for emissions from emission sources that are not functioning properly and causing emission exceedances has merit and will be considered for inclusion in future amendments to the OMET rule.

123. COMMENT: A number of commenters suggested that the rules should give the Department discretion to limit the need for credit use when the Department's processing of an application to revise the permit is delayed, through no fault of the user. (3), (9), (10), (17), (20)

RESPONSE: The proposed amendments at N.J.A.C. 7:27-30.14(d) and (e)2 included provisions which would allow a permittee with a pending permit application to commence operation prior to approval of the application, provided that the permittee compensate in full for any potential increase in emissions above the currently approved permit limit through use of credits. The proposed amendments did not provide the Department discretion to reduce the number of credits needed if the Department's processing of the application is delayed, and no such provision is included in the adopted amendments. The possibility of such a delay is part of the risk the permittee would assume if he/she commences operation prior to application approval. A permittee can avoid incurring this credit use obligation by refraining from operating the source outside the limits of its originally approved permit, until the new permit is approved.

124. COMMENT: A number of commenters objected to the provisions of proposed N.J.A.C. 7:27-30.14(f) believing they are in conflict with the intent of the affirmative defense statute, at N.J.S.A. 26:2C-19.2, which creates an affirmative defense for certain types of facility upsets. These upsets must meet a fairly rigorous set of circumstances and require written notice to the Department. Proposed N.J.A.C. 7:27-30.14(f) allows the voluntary purchase and dedication of DER credits for emissions from an incident where an affirmative defense is submitted. The operator must have taken all reasonable steps to minimize emissions when the incident happened to be eligible for an affirmative defense. Proposed N.J.A.C. 7:27-30.14(f) allows a person asserting an affirmative defense to use DER credits, to show that these reasonable steps have been taken. If the operator meets the requirements, then no penalty is assessed. By implication an affirmative defense request that is not accompanied by DER credits does not show that all reasonable steps to minimize emissions have been taken. One commenter asked whether the Department would ever conclude that a person has failed to take all reasonable steps to minimize emissions solely because the person did not use DER credits, and whether the Department would ever conclude that a person has failed to meet any of the other statutory criteria for an affirmative defense solely because the person did not use DER credits. The commenter asked further whether, if the facts of a particular violation showed that the person did not take reasonable steps to minimize emissions resulting from the violation, the use of DER credits could cure this failure and thus make the person eligible for an affirmative defense? The commenter suggested that, unless the answer to these questions is a simple "No," the proposed use of DER credits as part of an affirmative defense demonstration is not voluntary.

Another commenter suggested that this requirement could also become punitive if credits are unavailable or costly. Another commenter asked the Department to clarify whether or not this use is intended to be voluntary or mandatory and also asked where in the enforcement process would the

potential violator get an opportunity to challenge this mandatory purchase of DER credits. (3), (15), (17), (20)

RESPONSE: After considering these comments, the Department has determined not to include the provision which would have allowed a person to use DER credits as part of an affirmative defense demonstration to show that the person has taken all reasonable steps to minimize emissions. Upon adoption, proposed subsection N.J.A.C. 7:27-30.14(f) was deleted, the remaining subsections under section 30.14 were recodified, and related references throughout the rule were changed at N.J.A.C. 7:27-30.15(e) and 30.16(c)2.

125. COMMENT: The commenter asked if the requirements proposed in N.J.A.C. 7:27-30.14(g) and 30.14(h) are in conflict. The commenter also asked how compliance could be achieved with the New Jersey program which implements the Federal NSR/ PSD programs (N.J.A.C. 7:27-18) by using VOC and NO_x credits, since these credits do not achieve Federal compliance. The commenter suggested that a comparable, separate source of offsets would be required for both the federal program and the New Jersey program, which would in turn, eliminate the value of DER credits. (17)

RESPONSE: The requirements in N.J.A.C. 7:27-30.14(g) and 30.14(h) are not in conflict. N.J.A.C. 7:27-30.14(h)1 states that DER credits may not be used to avoid the applicability of emission offset requirements (or PSD or operating permit requirements). Whereas N.J.A.C. 7:27-30.14(g) states that if emission offset requirements are applicable, they can be met by use of DER credits but only under certain specified conditions.

126. COMMENT: The number of credits which must be used to compensate for actual emissions that exceed a permit limit can result in a situation where the credits which must be used equals the total increase in the potential to emit (PTE). This is the highest emission increase that could theoretically result from the change. One of the benefits open market trading is supposed to provide is a system whereby owners of smaller sources, or sources that operate infrequently and/or at reduced capacity, have the ability to meet their compliance obligations and take responsibility for emission reductions without the excessive cost of installing controls which are not economically feasible for their own equipment. Setting the use requirement for compliance with permit limits at the level of 100 percent of the increase in allowable emissions removes this benefit in many cases. Under the proposed provisions, a source could pay more for an emission increase than for the actual emission. This cost could be extreme and might very well equal or exceed the cost of additional controls. (8)

RESPONSE: The Open Market Emissions Trading Program offers an alternative means of compliance, not an exemption from compliance. The OMET Program makes some uses more costly than others. For example, as this commenter noted, in the case of “permit insurance” uses, the credits which must be used would equal the total increase in the potential to emit (PTE). In each case a potential user will have to evaluate whether or not the costs of compliance under the OMET system are worth it to them, or whether they would instead elect to comply through conventional means.

127. COMMENT: One commenter objected to the fact that the situation could arise whereby one source, whose emissions are less than those from a second source, would be required to purchase more credits for permit insurance. For example, in the case where Source 1 and Source 2 are subject to the same RACT limit, but Source 1 has a lower permit limit than Source 2, Source 1 would be required to purchase more credits than Source 2 for permit insurance even though Source 1 is the cleaner source. This can discourage the economic viability of cleaner sources. In addition, with required credit use for Source 1 automatically set at the maximum PTE increase, there is no longer any incentive for this source to keep emissions as low as possible. (Another aspect of potential trading program benefits lost). (8)

RESPONSE: The commenter addresses trading consequences that result from different permit limits for sources subject to the same RACT limit. The OMET program is based on the permit limits approved by the Department. Discrepancies in permit limits can be addressed only through permit applications seeking revised limits. The commenter wrongly asserts that there is no incentive to keep emissions as low as possible. Since the number of credits required for the use based on the difference between the ceiling rate and the current permit limit emissions rate, and the lower the “ceiling rate” the lower the number of credits the user would need, credit users will presumably set as low a “ceiling rate” as feasible to minimize their costs. Once the ceiling rate is set, the credit user must not allow its emissions to exceed this rate.

128. COMMENT: The Blue Ribbon Panel recommended a method for determining the number of credits used where a permit level was exceeded. This method was to multiply the actual maximum emission rate of the source times the actual activity level of the source to represent the actual emissions, and use the difference between this and the permitted level of emissions at that activity level as the amount of emissions which must be compensated for. The commenter asked why the Department chose not to use the recommended method of the Blue Ribbon Panel for determining the number of credits used when a permit level was exceeded. (8)

RESPONSE: The Department has included the method recommended by the Blue Ribbon Panel for determining the number of credits used when a permit level is exceeded under a permit insurance use. This method is set forth in Section V. of the Blue Ribbon Panel’s report on page 21 under the heading “2. Correctly quantifying the DER credit need.” The report specifies that the DER credit need should be calculated assuming that the source emitted at its maximum emissions rate throughout the use period. Therefore it is the source’s total potential activity level which is considered, and not the source’s actual activity level, as suggested by this commenter.

129. COMMENT: One commenter objected to there being no guidelines or limits on the valuing of credits. (3)

RESPONSE: The value of a DER credit is set by the market and is limited only by the price sellers are willing to sell at and the price that buyers are willing to pay.

Required Uses

130. COMMENT: This rule proposal would convert a “voluntary” Open Market Emissions Trading system into a mandatory punitive program. The existing trading system is based on the voluntary use and generation of credits. As it is reasonable to assume that many of the credits currently “in the bank” are being held by the generator for its own eventual use, these banked credits may not actually be available to those required to purchase credits. Combined with the increased credit pricing uncertainty of a forced market, this could limit the availability of sufficient credits to satisfy mandatory credit compensation requirements. Moreover, the new mandatory provisions may create an atmosphere where facilities mandated to use credits are at the mercy of the credit holders in order to obtain needed credits. While acceptable in a voluntary system, this becomes intolerable in a mandatory program. Although the Department states that the mandatory provisions are not meant to be punitive, the results of this rulemaking may be punitive for those facilities required to purchase credits in a limited market. (3), (11), (12)

RESPONSE: Since its inception in August 1996, the OMET Program has included mandatory as well as voluntary uses. Most participation by users is voluntary. Over 95 percent of DER credit use has been a voluntary use. Furthermore, it is unlikely that there will be a scarcity of credits. Ten times more credits have been generated than have been used since the program began in 1996.

Authorized Uses

131. COMMENT: One commenter found it equitable for facilities to have the ability to exchange credits internally, so that the benefit of emissions sources that emit below permitted levels can be applied to offset emissions sources that are less efficient. (6)

RESPONSE: The OMET rules do allow credits generated by one emissions source at a facility to be used, in accordance with the rules, by another source at the facility for compliance. The Department appreciates this commenter’s support for this aspect of the OMET program.

132. COMMENT: One commenter suggested that an exception from the requirement to obtain credits to make up a shortfall, should be made when, under the proposed OMET rules, permit-holders’ measured emissions increase solely because of a change in the method used by the Department to calculate emissions (for example, a change in the AP-42 emissions factors). The rules should exempt such emissions from the usual consequences of excess emissions during the remaining life of the permit. (6)

RESPONSE: It is the responsibility of permittees to comply with air pollution requirements. If the applicable testing or measurement methods are revised, the responsibility to maintain compliance is nonetheless sustained. Provisions of the OMET rule may be helpful to such a permittee, such as the Class 1 “permit insurance” use described at N.J.A.C. 7:27-30.14(d)1. This use allows a permittee to exceed a permit limit by a relatively small amount, generally for a period of limited duration, provided that the increase in potential emissions is compensated for with credits. This degree of flexibility might prove sufficient to maintain compliance while adjustments are made so that compliance can be achieved, over the longer term, without relying on credits.

133. COMMENT: One commenter wondered just what flexibility the permit insurance concept would offer given the restrictions set forth at proposed N.J.A.C. 7:27-30.14(h), (i) and (j), and found unclear when or if facilities would be able to use credits for “permit insurance.” (3)

RESPONSE: The uses which the Department anticipates to be the usual voluntary uses of DER credits are listed at N.J.A.C. 7:27-30.14(b) through (f). N.J.A.C. 7:27-30.14(d) lists the conditions under which a “permit insurance” use may be employed.

N.J.A.C. 7:27-30.15 DER credit use: Notice of Intent to Use

134. COMMENT: Two commenters objected to the broad analysis of the effects of a DER credit use on emissions of hazardous air pollutants (HAPs) which proposed N.J.A.C. 7:27-30.15(d)8 would require in the Notice of Intent to Use. While the rule currently requires only analysis of expected increases in HAP emissions, it would now require analysis of any HAP increase which “may” result from the use, regardless of either the amount (de minimis or otherwise), or the location of the increase. One commenter questioned the value of this additional information because it would be so speculative and conjectured that the scope and speculative nature of the required analysis would dissuade conscientious users from certifying a Notice of Intent to Use. This requirement could make the revised regulations unattractive to potential users. Because de minimis changes are by definition too small to cause concern or to accurately quantify, they should be excluded. Additionally, only HAP increases at the user source(s) should be the focus of the reporting requirement. (14), (20)

RESPONSE: The Department agrees with the commenter that the intent of the rule was to ask a user to include in a Notice of Intent to Use the amount (if any) of HAP emissions that would reasonably be expected to result from the use of the DER credits, not from unanticipated accidents or acts of God. The amended rule at N.J.A.C. 7:27-30.15(d)8 has been clarified to reflect this. The Department recognizes that this responsibility to disclose potential HAP emission increases may dissuade some potential users from using credits, but has determined on balance that it is more important to assure the public that they will be fully informed of this potential adverse consequence, however minor. In a similar vein, the Department has included the requirement to disclose HAP emission increases associated with generation, as well as use, to ensure that any HAP emission increases associated with trading are fully disclosed.

135. COMMENT: One commenter supported the provision at proposed N.J.A.C. 7:27-30.15(e) that a Notice of Intent to Use is not required when DER credits are used to compensate for excess NO_x emissions during MEG alerts. The unpredictability of MEG alerts would make it impossible for a Notice of Intent to be truly informative in this regard. (20)

RESPONSE: The Department appreciates this commenter’s support.

136. COMMENT: The reasoning behind eliminating the Notice of Intent requirement for MEG alerts also applies to compliance with an averaging plan through credit uses. The Notice of Intent for both MEG alert uses and for averaging plan uses cannot be truly informative because it is impossible to predict the timing of the use, the extent of the use, or even whether the use will occur

at all. The occurrence of an upset that will make a low-emitting averaging plan unit unavailable on a particular day during the ozone season, and thus create a need to use DER credits on that particular day, cannot be predicted. Proposed N.J.A.C. 7:27-30.15(c)1, which allows the filing of a single Notice of Intent to Use for all sources in an averaging plan, is a step in the right direction, but the Department should consider eliminating the Notice of Intent to Use requirements for averaging plan compliance. (20)

RESPONSE: The Department views the use of DER credits for compliance with an averaging plan as a normal operational use of credits for compliance, and believes that the reasoning behind requiring Notices of Intent to Use for most circumstances (that is, to provide the Department and the interested public advance notice that credits may be used) also applies to this use.

N.J.A.C. 7:27-30.16 DER credit use: Notice of Use

137. COMMENT: One commenter recommended that the Department adopt language that clearly states that N.J.A.C. 7:27-30.16 does not require the inclusion, with the Notice of Use, of the supporting documentation for Notices of Generation, Verification, Transfer, and Intent to Use, and that only the Notice forms need to be submitted. (9)

RESPONSE: As requested by this commenter, the amended rules does not require the submission, with a Notice of Use, the supporting documentation for Notices of Generation, Verification, Transfer, and Intent to Use. In fact, even the relevant Notice of Generation, Verification, Transfer, and Intent to Use forms are not to be submitted with a Notice of Use. Under the amended rules, all such forms and supporting document are submitted to the registry with its corresponding notice, and can be accessed through the registry by any interested party.

Instead, as specified at N.J.A.C. 7:27-30.16(b)7, only the supporting information required by the quantification protocol for the Notice of Use must be submitted with the Notice of Use. To be similarly clear elsewhere in the rule, N.J.A.C. 7:27-30.7(d)16 and 15(d)6 have been revised upon adoption to specify, respectively, that it is the supporting documentation required for a Notice of Generation that must be submitted with a Notice of Generation and it is the supporting documentation required for a Notice of Intent to Use that must be submitted with a Notice of Intent to Use.

N.J.A.C. 7:27-30.18 General notice requirements

138. COMMENT: Proposed N.J.A.C. 7:27-30.18(e)2, which appears to be applicable to all notices, including the Notice of Verification, would require certification signed by a “responsible official.” Would this mean that, for the Notice of Verification, a verifying company such as Stone & Webster would have to obtain certification by a Stone & Webster corporate officer? This would not be practical. The Department should clarify this requirement as it affects the verification and notice process. (14)

RESPONSE: The Department does not agree that complying with the certification requirements at N.J.A.C. 7:27-30.18(e)2 is “impractical” and therefore the Department has adopted the paragraph as proposed. The definition of “responsible official” at N.J.A.C. 7:27-1.4 offers a corporation significant flexibility in who may sign a certification on its behalf. The certification requirement in the OMET rule is the same as what is generally required at N.J.A.C. 7:27-1.39(a) for the submission to the Department of a permit or other application, report or other document which must be certified. It is appropriate that Notices submitted under the OMET Program have the same type of certification as these other documents.

N.J.A.C. 7:27-30.19 Submission of notices

139. COMMENT: The requirement at proposed N.J.A.C. 7:27-30.19(d)3, that a Notice of Use must include, in addition to the Notice of Generation and Verification, all supporting documentation for each DER credit being used, appears to be an unnecessary burden since the Notices of Generation and Verification are accepted by the Registry only when all of the supporting documentation has been submitted. This requirement will increase transaction costs and conflicts with the Paperwork Reduction Act. (5), (9)

RESPONSE: Since the documents that would have been required by proposed N.J.A.C. 7:27-30.19(d) to be submitted on paper to the Department are available to the Department (as well as to the public) on the registry electronically, and since the Department may obtain these documents on paper pursuant to N.J.A.C. 7:27-30.22 from the generator, verifier, or user, or from the registry operator, the Department has accepted this commenter’s recommendation and has not included subsection 30.19(d) in the adopted amendments. The Department has also consequently recodified the remaining subsections under section 19 and corrected affected references at N.J.A.C. 7:27-30.12(g)1 and 30.14(d)2. However, the commenter is advised that the requirement at N.J.A.C. 7:27-30.16(b)7, to submit all supporting documents required pursuant to the quantification protocol used for the use, remains in force.

N.J.A.C. 7:27-30.20 Amendment of notices

140. COMMENT: One commenter sought guidance regarding the following hypothetical situation:

In one area, a Notice of Intent to Use has to be filed for a non-permit insurance use with the maximum number of DER credits to be used in the use period identified. Later it appears that more DER credits than originally projected might ultimately be required. Should the facility amend the Notice of Intent to Use to reflect an end date prior to the original end date and then file a second Notice of Intent to Use for the remaining period? (8)

RESPONSE: Users are encouraged to consider carefully their maximum potential DER credit use requirements, and to include this amount in the Notice of Intent to Use that they submit, so as to avoid their being in the hypothetical situation described by the commenter. However, should a user find himself or herself in such a situation, it would be an option allowed under the OMET rule for the user to amend the original Notice of Intent to Use to reflect an end date prior to the original end

date and then to file a second Notice of Intent to Use for the remaining period or other subsequent period, provided that overall limits such as those established at N.J.A.C. 7:27-30.14(d)3 are not exceeded.

141. COMMENT: Two commenters asked why the ‘ceiling rate’ cannot be changed for permit insurance uses. If the user could have first proposed any amount up to the proposed limit in the permit application, why is the initial projection so important? The Department seems intent on holding permittees accountable to initial projections. What is the harm in allowing a source operator to make reasonable projections about operations, prepare for that level of operation and emissions with adequate credit purchases, and then adjust as necessary, if ultimately the goal is environmental benefit, through credit use? (8), (20)

RESPONSE: The concept for the permit insurance uses is that the number of credits that the user will use is set up front, and that number does not change even if the user actually emits less than the maximum that would be allowed. This is comparable to an individual’s buying health insurance. The insurer does not later lower the fee, if it turns out that the insured person does not get sick while the insurance is in effect. Therefore ceiling rate may not be amended, as it is the basis for determining what the number of credits required for the use is. Changing the ceiling rate later would invalidate this procedure. The fact that some users of permit insurance will surely “buy” more insurance than it turns out they need is one of the environmentally beneficial aspects of permit insurance, as amount by which the value of the credits used exceeds the emissions actually released represents a net benefit to the environment.

142. COMMENT: The Department’s concern is that a source is not allowed to exceed an enforceable limit. There is the possibility that a violation could be avoided if a change was made before the actual emission rate was exceeded. However, because it is proposed that the last day of the use period is unchangeable, the operator of a source that exceeds its ceiling rate during the use period has no ability to correct a situation that may become known before that date. Is holding a source in violation for the duration of the use period really preferable to preventing emission exceedances? (8)

RESPONSE: An amendment may be submitted, changing the last day of the use period, for most uses pursuant to N.J.A.C. 7:27-30.20(c)3. Only if the use is a “permit insurance” use does the rule prohibit a user from changing the last day of the use period through an amendment. This prohibition is necessary because N.J.A.C. 7:27-30.14(d)5 requires the total amount of credits required for the use to be held at the time the Notice of Intent to Use is submitted and N.J.A.C. 7:27-30.13(b) requires the calculation of this amount of credits to rely on duration of the use period. Changing the last day of the use period later would invalidate the calculation and notice procedure. However, if a user with a permit insurance use wants a longer use period, the user may submit a second (or third) Notice of Intent to Use and establish consecutive use periods.

N.J.A.C. 7:27-30.24 Standards for quantification protocols

143. COMMENT: Proposed N.J.A.C. 7:27-30.24(c)3 would require that a quantification protocol use the most representative, accurate, current and reliable data available. At the same time, it requires that any actual emissions data available must be used. While acknowledging that using actual data rather than estimates has certain benefits, the commenter noted the possibility that the actual data are not representative, or are believed to be inaccurate or unreliable, or are not at all current. The data used in quantification protocols should provide the best representation of the impact of the strategy on the air. The commenter supported the use of actual data if they are best able to achieve this goal, but argued that superior calculations should not be disqualified simply because they are not actual. (20)

RESPONSE: The Department acknowledges the validity of this comment and has modified the amended rule at N.J.A.C. 7:27-30.24(c)3 and added a new paragraph at N.J.A.C. 7:27-30.25(b)5 requiring a user who elects not to use available actual emissions data to document that reliance on other methods produces emissions data that is more representative, accurate, current and reliable.

N.J.A.C. 7:27-30.25 Contents of quantification protocols

144. COMMENT: The amount of explanation and documentation required to be included in quantification protocols is overwhelming, would over-regulate the OMET program which is intended to be self-regulating, and would significantly increase transaction costs. The Department should adopt less burdensome quantification protocol requirements. (9)

RESPONSE: The Department has no wish to over-burden generators and users, and has made every effort to require only the essential documentation. The Department welcomes specific suggestions for how this documentation of credits could be simplified or streamlined. However, sound documentation is the foundation of a credible emissions trading program.

145. COMMENT: One commenter felt that the level of detail required by the proposed rule revision to be reflected in the quantification protocols represented a significant “ramp up” from the existing rule which would drive up the cost for verifications without any obvious benefit to the environment. The commenter suggested that in adding quantification protocol requirements to the OMET rule the Department should look to the programs developed by the Michigan Department of Environmental Quality (MDEQ) and the State of Texas. The use of these examples in the revised New Jersey rule could serve to clarify the level of detail the NJDEP believes is suitable, while demonstrating (by virtue of a “real world” example) the “achievability” of that level of required detail. This would also help foster confidence in the user that certain required changes in the quantification protocols are achievable and address the NJDEP’s concern that the quantification protocols lack sufficient safeguards. (5)

RESPONSE: The level of detail required by the amended rule for quantification protocols does not represent a “ramp up” from the Phase 1 rule. Rather, the amended rule consolidates the requirements for protocols in one place, to make it easier for a potential generator or user to assess what credit generation or use entails.

146. COMMENT: As proposed, N.J.A.C. 7:27-30.25(a) would require the generator or user to specify in the quantification protocol the methodology used to compile, summarize, analyze and report emissions data, activity level data, and economic output data. This methodology description could protect proprietary information, as long as the methodology description can be provided at a general, rather than detailed, level. Similarly, as proposed, the requirement in N.J.A.C. 7:27-30.25(b) and 30.25(c) that the supporting documentation be provided could be a problem with proprietary information. The commenter suggested that the Department include clarification of the level of detail of data required and appropriate limitations regarding proprietary information in the final regulations. (14)

RESPONSE: The Department agrees with the commenter that issues pertaining to the disclosure of proprietary information should not arise in respect to quantification protocols. But in respect to supporting information required to be submitted with Notices of Generation, the Department does recognize that this could be of concern. In developing the OMET Program, the Department considered this issue but determined that full public disclosure was an underlying principle of the OMET Program. Therefore, if a potential generator does not wish to disclose certain supporting information, such person should choose not to generate DER credits. As for credit use, including mandatory credit use, the Department does not anticipate that the type of documentation required to be included in the supporting information for credit use would raise issues of proprietary information; however if this does not prove to be the case, the Department will reconsider this matter when it subsequently amends the OMET rule.

147. COMMENT: One commenter suggested that proposed N.J.A.C. 7:27-30.25(a)2 should be revised to read as follows: “The generation strategies or uses to which the protocol applies. Each generation strategy and each use shall be described with sufficient detail and specificity so as to enable a person to determine unambiguously whether or not the protocol applies to any given generation strategy or use.” (20)

RESPONSE: The Department has accepted this commenter’s recommendation and has incorporated the recommended change into the adopted rule.

148. COMMENT: As proposed, N.J.A.C. 7:27-30.25 would establish an expanded list of required contents for quantification protocols. The commenter suggests that quantification in the context of the OMET program should not be held to standards substantially more demanding than the standards typically applied to evaluate compliance outside the OMET program. The issues which the Department raises, particularly in N.J.A.C. 7:27-30.25(b), are issues that quantification protocols should address; however, the Department should consider the extent to which it may hinder the trading market by requiring quantification to include information which is substantially beyond what is normally available for compliance with other air requirements. (20)

RESPONSE: N.J.A.C. 7:27-30.25 does not prescribe the methods that must be used. The Department believes that the requirements of this section can be satisfied in most cases with the same types of information that would typically be needed for permitting and for documenting compliance.

149. COMMENT: Proposed N.J.A.C. 7:27-30.25(b)3 would require a quantification protocol to specify the supporting documentation required, including “a listing of all State and Federal air quality regulations, orders and permits that apply” to the generator source or user source. The commenter supported this requirement, but noted that if the definition of “surplus” for GHG credits is modified, this provision would need to be revised accordingly. (20)

RESPONSE: In response to comment 72, the Department acknowledged that, in view of the emerging policies pertaining to GHG emissions, the Department may need to reconsider the definition of “surplus” in the future. At such time, it may also need to consider revising N.J.A.C. 7:27-30.25(b)3 accordingly.

N.J.A.C. 7:27-30.26 Hierarchies of quantification techniques

150. COMMENT: Proposed N.J.A.C. 7:27-30.26 would establish the hierarchy of quantification techniques for DER generation and use. The commenter supported the inclusion of this useful information in the new rule, but argued against its being mandated. In many cases, data from quantification methods at the top of the hierarchy may be available but may not be valid or applicable. At a minimum, the adopted rule needs a provision to handle the case of invalid or non-applicable data. The commenter recommended including this hierarchy as guidance rather than as a requirement. (9)

RESPONSE: The Department has accepted this comment and has not included proposed N.J.A.C. 7:27-30.26 in the amended rule. Rather this section has been “reserved” for future use, and the proposed hierarchies of quantification techniques for stationary sources have been converted into a guidance document which the Department is making available electronically on the web and also on paper by request. The Department recognizes that air quality regulatory programs are currently shifting to more reliance on the measurement, quantification, and reporting of actual emissions. With greater attention being given to these areas, this is a period of evolution of better approaches. As better quantification techniques and approaches become available, the Department will be able to more readily incorporate them into a guidance document, than into a promulgated rule. The guidance document will provide assistance in selecting (rather than requirements for selecting) the technique(s) to be required by the protocol to measure and quantify actual emissions.

In converting the text proposed at N.J.A.C. 7:27-30.26 to a guidance document, minor edits have been made to the guidance for clarity, and certain proposed language (e.g., “x. Permitted allowable emission or other default value”) has been removed, as it could lead to use of inappropriately high estimates. Related changes were made in the amended rule: specifically, at N.J.A.C. 7:27-30.24(c), proposed paragraph 4 has been revised and merged into paragraph 3; and these changes have been reflected at N.J.A.C. 7:27-30.25(b)5ii. The address at which the guidance is available has been added at N.J.A.C. 7:27-30.24(j) and the address for obtaining protocols, previously given at N.J.A.C. 7:27-30.24(h), has been removed and combined with the address at which to obtain the guidance in (j).

N.J.A.C. 7:27-30.27 Interface with other trading programs

151. COMMENT: One commenter supported the changes to N.J.A.C. 7:27-30.27(a) and 31.6, which allow the conversion of NO_x Budget allowances into DER credits. (20)

RESPONSE: The Department appreciates this commenter's support.

N.J.A.C. 7:27A-3.10 Civil administrative penalties for violation of rules adopted pursuant to the Act

152. COMMENT: The Department has added a significant number of new penalty provisions to what was a voluntary emission trading rule. This significant additional exposure to penalties further illustrates the complexity and punitive nature of the rule proposal. (3)

RESPONSE: Whether a person wishes to generate credits is voluntary in the Open Market Emissions Trading (OMET) Program. Except for the limited number of required uses at N.J.A.C. 7:27-30.14(a), which generally apply in certain cases where a person has not otherwise met his or her regulatory obligations, use of credits for compliance is also voluntary. However, if a person does participate in the OMET Program, they must do so properly. Notices that are submitted must be true, accurate, and complete so they can be relied on, not only by the Department, but also by other OMET participants. Compliance through credits must be carried out in accordance with the procedures set forth in the regulation. Use of credits offers an alternative means of compliance, not an exemption from regulatory obligations.

Summary of Agency-Initiated Changes:

1. N.J.A.C. 7:27-1.32(a)1iv. The adopted rule corrects the wrong citation inadvertently placed in the proposal.
2. N.J.A.C. 7:27-8.1. In the definition of "greenhouse gas", the proposal incorrectly identified one of the gases as "HFC-4310me". The correct nomenclature is "HFC-4310mee". Also, the proposal incorrectly identified another of the gases as "HFC23". The correct nomenclature is "HFC-23". These were changed upon adoption.
3. N.J.A.C. 7:27-8.1. Upon adoption, the definition of "potential to emit" was clarified by adding a statement that, if permit insurance is being used for compliance, the term includes the emissions allowed to be emitted pursuant to the permit insurance; this same clarification was also made in the definition of "potential to emit" at N.J.A.C. 7:27-22.1. Additionally, in the last sentence of the definition the phrase "not include consideration of" was condensed to "not include" to express the same meaning in fewer words.
4. N.J.A.C. 7:27-8.20(b)3. The proposed rule erroneously stated that a seven-day-notice may be used to give advance notice to the Department of an impending increase in the actual emissions of an air contaminant included in a permit. This general allowance of use of seven-day-notices in all cases where there may be an increase in actual emissions was not what was intended. Rather the

Department's intention at N.J.A.C. 7:27-8.20(b)3 was to allow the use of a seven-day-notice only in cases where there is the potential for an increase in actual emissions due to a use of DER credits under N.J.A.C. 7:27-30, such as for a new "permit insurance" use at N.J.A.C. 7:27-30.14(d). Therefore, N.J.A.C. 7:27-8.20(b)3 has been corrected upon adoption. The other instances in which a seven-day-notice may be used to give advance notice to the Department of an impending increase in the actual emissions are addressed at N.J.A.C. 7:27-8.20(b)1.

Also, proposed N.J.A.C. 7:27-8.20(b)3 inadvertently omitted an explanation that the increase in emissions referred to is a possible or potential increase, not necessarily an increase in actual emissions. Therefore, to clarify this, the modifier "potential" has been added upon adoption before the word "increase" at N.J.A.C. 7:27-8.20(e)3.

5. N.J.A.C. 7:27-18.11(a)2. In order to be consistent with the timeframes for emission reductions on which credits may be based established in the Phase 1 OMET rule (and maintained in the amended rule) at N.J.A.C. 7:27-30.6(b)3, the proposed date of May 1, 1995, is replaced in the adopted amendments with the date to August 2, 1996, which is also the date the OMET program became operative.

6. N.J.A.C. 7:27-22.1. Upon adoption, consistent with the amended definition of the same term in Subchapter 8, the definition of "potential to emit" was clarified by adding a statement that, if permit insurance is being used for compliance, the term "potential to emit" includes the emissions allowed to be emitted pursuant to the permit insurance. Additionally, the last sentence in the definition was amended to state that the term shall also not include DER credits and NO_x allowances, as had been specified in the last sentence in the definition of this term at N.J.A.C. 7:27-8.1.

7. N.J.A.C. 7:27-22.18(k)1iv. Upon adoption, the street address and zip code of the Southern Regional Office were changed from "One Porter Center" to "One Port Center" and from "08102" to "08103" respectively.

8. N.J.A.C. 7:27-30. Grammatical and spelling errors and inadvertent word omissions in the proposal were corrected upon adoption at N.J.A.C. 7:27-30.2 (in the definition of "oxides of nitrogen" and of "permit insurance"), 30.5(h)2, 30.6(b)4, 30.7(d)15, 30.12(c), 30.12(g)2, 30.14(a)5, 30.14(a)5i(B), 30.15(d)8, and 30.19(g).

9. N.J.A.C. 7:27-30. Incorrect cross-referenced citations were corrected at N.J.A.C. 7:27-30.14(c).

10. N.J.A.C. 7:27-30. To achieve consistent usage of the defined term, the phrase "emission source" has been changed to "emissions source" at N.J.A.C. 7:27-30.2, in the definition of "permit insurance" and at N.J.A.C. 7:27-30.6(a)12, 6(f), 7(c)4, 13(e)2ii(A), 14(a)5i(B)(1), 15(c), 15(c)1 and 25(a)1.

11. N.J.A.C. 7:27-30.2. The adopted definition of "DER credit" clarifies that there are three types of DER credits: VOC credits, NO_x credits, and GHG credits.

12. N.J.A.C. 7:27-30.2. In the definition of “greenhouse gas”, the proposal incorrectly identified one of the gases as “HFC-4310me”. The correct nomenclature is “HFC-4310mee”. Also, the proposal incorrectly identified another of the gases as “HFC23”. The correct nomenclature is “HFC-23”. These were changed upon adoption.
13. N.J.A.C. 7:27-30.2. The definition of “MEG alert,” previously promulgated at N.J.A.C. 7:27-19.1, was added to the adopted rules at N.J.A.C. 7:27-30.2. since this term is used in subchapter 30 but had not been defined.
14. N.J.A.C. 7:27-30.5(g). In both the introductory sentence and paragraph 5 of the amended rule at N.J.A.C. 7:27-30.5(g), the phrase “and ‘historic economic output’ ” has been added to correct an inadvertent omission. Consequently, the second subject and verb of the compound introductory sentence are changed from singular to plural. Also the term “baseline emissions” in paragraph 5 is replaced with the term “historic emissions” to achieve a more precise and consistent use of terms.
15. N.J.A.C. 7:27-30.5(g)4. Subsection (g) lists the conditions under which a generator may continue to use the same value for baseline emissions in subsequent years, as was used in the initial year. In the adopted rule at N.J.A.C. 7:27-30.5(g)4 an additional condition, which was inadvertently omitted from the proposal, has been included. This condition acknowledges that if EPA or the Department promulgate a new applicable lower emission limit, this limit and not the historical values must be used in determining baseline emissions.
16. N.J.A.C. 7:27-30.5(h)5. A new paragraph 5 has been added to the amended rules at N.J.A.C. 7:27-30.5(h) to reflect the existing prohibition at N.J.A.C. 7:27-30.6(a)11 against basing the generation of credits on emission reductions that occur outside New Jersey. This new paragraph reminds credit generators, when calculating the number of credits generated, to take this prohibition into account.
17. N.J.A.C. 7:27-30.6(a)4. Upon adoption the first sentence was clarified to state that an emission reduction used in any other emission trading program may not be used as the basis for generation of a DER credit if that reduction had been used as the basis for a credit under that other trading program. This change simply clarifies the intended meaning of the provision.
18. N.J.A.C. 7:27-30.6(a)6. Appendix 1 in N.J.A.C. 7:27-8 was referenced incorrectly in the proposal at N.J.A.C. 7:27-30.6(a)6, as were Tables A and B. These references were corrected upon adoption.
19. N.J.A.C. 7:27-30.6(a)6. Tables A and B in Appendix 1 of N.J.A.C. 7:27-8 give two types of emission thresholds: “Reporting Thresholds” and “SOTA Thresholds.” Clarification is provided at N.J.A.C. 7:27-30.6(a)6 that the intended emission threshold is the SOTA Threshold. In the Phase 1 OMET rule at N.J.A.C. 7:27-30.6(a)7 and 13(e) the emissions threshold was referred as “the de minimis level,” and it was specified that these levels were set forth in a proposed federal rule at 59 F.R. 15504. The SOTA Threshold levels in Appendix 1 of N.J.A.C. 7:27-8 replicate the levels in the proposed federal rule. In changing the terminology from “de minimis level” to “emission threshold” in the proposed amendments, the Department intended no change in substance and the

ambiguity introduced by the phrase was not recognized. This is corrected is the adopted rule by using the term “SOTA Threshold” instead of the phrase “emission threshold.”

20. N.J.A.C. 7:27-30.6(a)12 and 13. For clarity and uniformity of textual structure, proposed paragraph 12 was subdivided into paragraphs 12 and 13.

21. N.J.A.C. 7:27-30.6(b)4. A phrase was added that describes subchapter 21, which was already referenced.

22. N.J.A.C. 7:27-30.6(c). Upon the recommendation of the Division of Fire Safety in the New Jersey Department of Community Affairs, a limitation on the generation of GHG credits was added to the amended rules at N.J.A.C. 7:27-30.6(c). This limitation prohibits the generation of GHG credits by reducing the use of hydroflourocarbons (HFCs) or perflourocarbons (PFCs) in fire protection systems. The Division of Fire Safety has explained to the Department that HFCs and PFCs are commonly used in fire protection. In fact, HFCs and PFCs are among the most common fire suppression alternatives to Halon, whose use was curtailed due to Halon’s effect on the atmospheric ozone layer. The Department agrees that the OMET Program should not provide incentives for curtailing fire safety practices. To accomodate adding this limitation at (c), proposed subsections (c) through (e) were renumbered upon adoption to (d) through (f).

23. N.J.A.C. 7:27-30.6(d). Upon adoption, clarification of the originally intended meaning of subsection (d) (subsection (c) in the proposal) has been added, and the erroneous and internally-contradictory language in the proposed amendments which implied that there could be generation periods prior to June 6, 2000 has been removed.

24. N.J.A.C. 7:27-30.7(a). Clarification has been added, upon adoption, as to when the amended requirements for Notices of Generation commence applying, and until when the requirements in the original Phase 1 rule continue to apply.

25. N.J.A.C. 7:27-30.7(d)13. At N.J.A.C. 7:27-30.7(d)13, a new paragraph ii has been added to reflect the existng requirement at N.J.A.C. 7:27-31.6(a)1i(3) that the owner or operator of a NO_x Budget source, who is converting NO_x Budget allowances to DER credits, must provide a demonstration that actual emission reductions have been made by the NO_x Budget source and that the amount of these reductions is equal to or greater than the emissions value of the NO_x Budget allowances being converted to DER credits.

26. N.J.A.C. 7:27-30.7(d)15. ~~Three~~ Two clarifications were made upon adoption. The term “emissions” was inserted after “lower-emitting,” so that the full defined term is used; and the phrase “which was replaced” was used in place of the adjective “replaced” to prevent replaced equipment or control apparatus from being confused with replacement equipment or control apparatus.

27. N.J.A.C. 7:27-30.7(d)17iii. Upon adoption, the citation “25” was changed to “30.25” to make the way this citation is identified consistent with the way other citations are identified in subchapter 30.

- 28.** N.J.A.C. 7:27-30.7(d)20. A new paragraph 20 has been added to the amended rules at N.J.A.C. 7:27-30.7(d) which allows a person preparing a Notice of Generation to record the amount of emission reductions that occurred outside the State of New Jersey, as a result of the implementation of the generation strategy. This provision enables the out-of-state emission reductions to be acknowledged in the notice, even though, as a consequence of the existing prohibition at N.J.A.C. 7:27-30.6(a)11, they can not be used as the basis for generation of credits.
- 29.** N.J.A.C. 7:27-30.8(e)2ii. The proposal contained an erroneous reference to section 30.29. Upon adoption, this reference was replaced with the correct reference to subsection 30.10(e). Also, to correct a grammatical omission, upon adoption, the word “to” has been added after the word “pursuant”.
- 30.** N.J.A.C. 7:27-30.9(c)3. Upon adoption paragraph 3 has been revised to require the average per-credit price of credits generated during the ozone season and the average per-credit price of credits generated outside the ozone season to be recorded separately on a Notice of Transfer. Ozone season generated credits tend to have different values than non-ozone season generated credits. If the price of both types of credits were to be reported as averaged together, as the proposal would have required, the reported prices would mask this difference and would not give an accurate picture of credit price.
- 31.** N.J.A.C. 7:27-30.10(e)3. Upon adoption, in paragraph 3, the phrase “part of the batch” was changed twice to “part of the credits in the batch” to clarify that a whole number of credits must be specified, not a fraction of the number of credits.
- 32.** N.J.A.C. 7:27-30.10(g). The term “DERs” was inadvertently placed in the proposed rule. The term should have been “DER credits”. This was corrected upon adoption.
- 33.** N.J.A.C. 7:27-30.10(i). Clarification has been added, upon adoption, as to when the amended requirements for Notices of Generation commence applying to the verification of these notices, and until when the requirements in the original Phase 1 rule continue to apply.
- 34.** N.J.A.C. 7:27-30.12(g)1. A reference to Appendix C was added to paragraph 1 to assist a reader of the rule, as had also been done at subsection N.J.A.C. 7:27-30.19(h). Also, an incorrect reference to N.J.A.C. 7:27-30.19(j) was changed to the correct reference N.J.A.C. 7:27-30.19(h).
- 35.** N.J.A.C. 7:27-30.12(i)2. An incorrect reference to N.J.A.C. 7:27-30.14(g) was changed to the correct reference N.J.A.C. 7:27-30.14(f).
- 36.** N.J.A.C. 7:27-30.13(b)1. Upon adoption, the location of the definition of the term “CR” was moved before the definition of the term “PL” since “CR” comes before “PL” in the equation. Also, the definition of the term “CR” was clarified by the addition of the phrase “, which is”; and the definition of the term “PL” was modified upon adoption to clarify that the permit limit is the limit which is currently in effect. Also, the word “and” was added after the end of the definition of the term “PL”.

37. N.J.A.C. 7:27-30.13(b)1iii. This subparagraph and the term “and” in the previous line are extraneous text that was inadvertently included in the proposal and that was deleted upon adoption.
38. N.J.A.C. 7:27-30.13(b)2. Upon adoption, the term “DER” was removed from the first sentence in order to preserve use of terms as defined. Also, the word “and” was added at the end of paragraph 2.
39. N.J.A.C. 7:27-30.13(b)3iii. Upon adoption, an incorrect citation was corrected.
40. N.J.A.C. 7:27-30.14(a)5. For conciseness, the phrase “by a date that is” was replaced by the term “within;” and the phrase “by which the testing is required to be performed” was deleted and in its place the term “established” was inserted before the word “date.”
41. N.J.A.C. 7:27-30.14(a)5ii. The amended rule clarifies the duration of the time period used to determine the number of credits to be used to compensate for a delay in testing. Also, for consistency, one use of the term “day” at 30.14(a)5ii(A)(1) was changed to the term “date.”
42. N.J.A.C. 7:27-30.14(b). The amended rule clarifies that a DER credit must be verified prior to its use in full or partial settlement of a monetary penalty, and the proposal’s reference to N.J.A.C. 7:27A-3 was changed upon adoption to N.J.A.C. 7:27A-3.10(i).
43. N.J.A.C. 7:27-30.14(d). Subsection (d) has been clarified, upon adoption, to specify that the kind of permit limit which may be complied with through “permit insurance” is an emissions limit.
44. N.J.A.C. 7:27-30.14(e)2. Proposed paragraph 2 stated that there is no approved permit emissions limit which applies during the time a permittee has submitted a permit application for a permit revision, which the Department has not yet approved or disapproved. This is incorrect, since the emissions limit in the current permit would apply, and so has been removed from the adopted rule. Instead the text was corrected upon adoption to indicate that the new emissions limit in the permit application is not yet approved. Also, upon adoption, the second sentence was clarified by stating that it is “in accordance with the permit application” that Class 2 permit insurance allows a permittee to operate prior to being issued a revised permit.
45. N.J.A.C. 7:27-30.14(h)2. Appendix 1 in N.J.A.C. 7:27-8 was referenced incorrectly in the proposal at N.J.A.C. 7:27-30.6(h)2, as were Tables A and B. These references were corrected upon adoption. Also, the ambiguous phrase “emission threshold” was replaced with the more specific phrase “SOTA Threshold,” as was also done at N.J.A.C. 7:27-30.6(a)6 and discussed in agency initiated change 18 above.
46. N.J.A.C. 7:27-30.14(h)3. Proposed paragraph 3 inadvertently referenced N.J.A.C. 7:27-30(a)3 instead of N.J.A.C. 7:27-30.14(a)3; this was corrected upon adoption. Proposed paragraph 3 also incorrectly cited N.J.A.C. 7:27-30.14(a)3 and inadvertently omitted N.J.A.C. 7:27-30.14(a)4 from the list of exceptions; this too was corrected upon adoption.

47. N.J.A.C. 7:27-30.15(a). Clarification has been added, upon adoption, as to when the amended requirements for Notices of Intent to Use commence applying, and until when the requirements in the original Phase 1 rule continue to apply.
48. N.J.A.C. 7:27-30.16(a). Clarification has been added, upon adoption, as to when the amended requirements for Notices of Use commence applying, and until when the requirements in the original Phase 1 rule continue to apply.
49. N.J.A.C. 7:27-30.19(g). Clarification was added to subsection (g) which indicates that the requirements of this subsection do not apply if a credit user is not required to submit a Notice of Intent to Use.
50. N.J.A.C. 7:27-30.19(h). To clarify who to send the Notice of Intent to Use to, the word “Chief” was added to the address at proposed subsection 30.19(i), which was recodified upon adoption as 30.19(h).
51. N.J.A.C. 7:27-30.19(h). Since it is possible that the Edwin B. Forsythe National Wildlife Refuge boundaries could change in the future, and since any change is expected to be published in the Federal Register, the adopted rule (recodified from proposed subsection 30.19(i)), clarifies that if there is a difference in the size and location of the refuge between Appendix C (renumbered from proposed Appendix E) of subchapter 30 and the Federal Register, the size and location of the refuge published in the Federal Registry shall prevail. Also, the reference to Appendix E in the proposal has been recodified to reference Appendix C.
52. N.J.A.C. 7:27-30.20(c)1. This paragraph was amended to clarify that there are a limited number of conditions under which a change in the name on a notice of a generator, verifier, transferor, transferee, retiree, or user may be made through the submission of a Notice of Amendment. These conditions are as follows: 1) the entity legally changes its name without any concomitant reorganization, or is merged into or consolidated with a successor entity with a different name; and 2) the renamed or successor entity documents to the Department its assumption of all liability for the original notice and its information. If, for example, company A generated credits, is subsequently merged into company B, the subsequent merged entity is known as company B, and company B assumed the liability for company A’s credits, then the name on the Notice of Generation may be changed to company B through a Notice of Amendment. However, if company B did not assume the liability for company A’s credits, then the name company A may not be changed to company B on the Notice of Generation through an amendment. For company B to hold the credits in such a case, company A would have to convey them to company B through a Notice of Transfer.
53. N.J.A.C. 7:27-30.21(c)4. The Phase 1 OMET rule at N.J.A.C. 7:27-30.17(d)2i required any written agreement between the Department and another state’s air pollution control agency to satisfy all applicable requirements established by the EPA for interstate DER trading agreements. In the proposed amendments, this requirement was inadvertently omitted. In the adopted rules this provision has been restored at N.J.A.C. 7:27-30.21(c)4.
54. N.J.A.C. 7:27-30 Appendix C. Appendix C, which was proposed as Appendix E, inadvertently included an incorrect map. Upon adoption, it was replaced with the correct map.

55. N.J.A.C. 7:27-30 Appendix D. Since proposed Appendix D “Emission Coefficients” was only referenced at proposed N.J.A.C. 7:27-30.26 “Hierarchies of quantification techniques” which was not adopted but instead is being made available as guidance, proposed Appendix D also was not adopted and instead incorporated into this guidance. See the adopted rule at N.J.A.C. 7:27-30.24(j) for information as to how to obtain a copy of this guidance entitled “Hierarchies of Quantification Techniques”.

56. N.J.A.C. 7:27-31.6(a). At N.J.A.C. 7:27-31.6(a) several changes were made to clarify the intended meaning of the subsection and correct the proposed text. These include clarification that more than one allowance may be converted to DER credits; clarification at (a)1 and 3, through changing from the passive to the active voice, as to who is responsible for meeting the condition and what action he/she is responsible for; changing the verb tenses at (a)1 through 3 to the present tense, so that their tenses will be consistent with that of (a)4; indication at (a)1i(2) that the duration of the generation period for the DER credits is the same as the NO_x Budget control period; and breaking out the two qualifying conditions that emission reductions must meet in (a)1i(3) into a list for clarity. An introductory phrase was added to the second sentence in (a)3 to clarify that the first part of that sentence represents an exception to the first sentence; the latter part of the proposed second sentence, which does not convey an exception to the first sentence, was separated into two independent sentences. Superfluous words and phrases were deleted from (a)4. Other changes were made to use clearer descriptors in several places, such as substituting the phrase “NO_x Budget allowance” in the initial sentence of (a) for the lengthier phrase “an allowance allocated under the NO_x Budget Program;” and substituting the phrase “for the generation of DER credits based on the retirement of the allowances” in (a)4 for the more ambiguous phrase “in which the reductions are used as the basis for the DER credits.”

57. N.J.A.C. 7:27A-3.10(m)8. Certain provisions of N.J.A.C. 7:27A-3.10(m)8 that were not proposed to be changed contained incorrect citations to Table B in Appendix 1 of Subchapter 8 which were corrected in this adoption. The corrected citations in paragraph 8 are at the following locations: Citation N.J.A.C. 7:27-8.3(a) Other Preconstruction Permit, Item 5; Citation N.J.A.C. 7:27-8.3(b) Obtain Certificate, Item 5; Citation N.J.A.C. 7:27-8.3(e) Emissions Detected by Stack Tests from Source Operation”, fourth category; Citation N.J.A.C. 7:27-8.3(e) Preconstruction Permit and Certificate Conditions and Provisions”, Item 5; and footnote 6.

58. N.J.A.C. 7:27A-3.10(m)8. Regarding table N.J.A.C. 7:27-22.15(b)1 “Temporary Facility Operating Permit Requirements”, the Class 2 “Fourth and Each Subsequent Offense” penalty amount in the proposal (\$12,500) did not match the amount in the New Jersey Administrative Code book (\$12,000) prior to proposal. This amount was not proposed to be changed. Upon adoption the current amount (\$12,000) in the New Jersey Administrative Code book is retained.

59. N.J.A.C. 7:27A-3.10(m)22. In the proposal, citation “N.J.A.C. 7:27-22.3(vv)” was located incorrectly. It should have been located after citation “N.J.A.C. 7:27-22.3(q)”. Upon adoption, N.J.A.C. 7:27-22.3(vv) was changed to N.J.A.C. 7:27-22.3(uu) pursuant to the response to comments 21 through 25 above, and relocated after citation “N.J.A.C. 7:27-22.3(q)”.

60. N.J.A.C. 7:27A-3.10(m)22. Certain provisions of N.J.A.C. 7:27A-3.10(m)22 that were not proposed to be changed contained incorrect citations to the Appendix of Subchapter 22 which were corrected in this adoption. The corrected citations in paragraph 22 are at the following locations: Citation N.J.A.C. 7:27-22.3(a) Obtain and Maintain Operating Permit, Item 5; Citation N.J.A.C. 7:27-22.3(b) Obtain Operating Permit Before Operation, Item 5; Citation N.J.A.C. 7:27-8.3(e) Other Conditions”, Item 5; Citation N.J.A.C. 7:27-22.3(e) Emissions Detected by Stack Test, fourth category; Citation N.J.A.C. 7:27-22.14(d) General Operating Permit Terms and Conditions, Item 5; Citation N.J.A.C. 7:27-22.15(b)1 Temporary Facility Operating Permit Requirements, Item 5; and footnote 6.

61. N.J.A.C. 7:27A-3.10(m)30. At the first citation for N.J.A.C. 7:27-30.16(a), the “Rule Summary” column in the New Jersey Administrative Code (Code) book, prior to the July 6, 1999 proposal, stated “Submit Notice and of DER Use”. The “Rule Summary” column in the proposal stated “Submit Notice [and Certification] of [DER] Use”, indicating that the language prior to the July 6, 1999 proposal was “Submit Notice and Certification of DER Use”. This administrative change changes the Code book to state the Department’s proposed language - “Submit Notice of Use”.

Federal Standards Statement

On April 7, 1994 the USEPA published Economic Incentive Program (EIP) rules in the Federal Register at 59 FR 16690 and subsequently codified these rules at 40 CFR Part 51, Subpart U. These rules apply to economic incentive programs, such as the OMET Program, which a State elects to adopt. The current OMET Program and the new rules and amendments adopted herein are consistent with the federal EIP rules.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***):

CHAPTER 27 AIR POLLUTION CONTROL

7:27-1.32 Request for an adjudicatory hearing

- (a) Any person who is aggrieved with respect to any of the following may request a contested case hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1, as follows:
1. If the person is an applicant, registrant, or permittee, and is aggrieved with respect to a decision made by the Department to:
 - i. Deny an application, or any part thereof, for a permit or certificate, for a modification or revision thereof, or for a renewal or a variance; or not accept a registration;
 - ii. Impose any condition on its approval which the applicant, registrant, or permittee finds objectionable;
 - iii. Revoke or withdraw a previously issued approval; or
 - iv. Deny the request for a stay under N.J.A.C. ***[7:27-8.13]* *7:27-1.33***; or
 2. If the person is the generator or holder of a discrete emission reduction (DER) credit generated pursuant to N.J.A.C. 7:27-30, and is aggrieved with respect to a finding made by the Department that the credit is invalid.
- (b)-(e) (No change.)

7:27-8.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

...

"Greenhouse gas" or "GHG" means any of the following gases: carbon dioxide (CO₂); methane (CH₄); nitrous oxide (N₂O); certain hydrofluorocarbons (HFC*_*23, HFC-125, HFC-134a, HFC-143a, HFC-152a, HFC-227ea, HFC-236fa, HFC-4310me****e***); certain perfluorocarbons (CF₄, C₂F₆, C₄F₁₀, C₆F₁₄); and sulphur hexafluoride (SF₆).

...

"Potential to emit" means the same as that term is defined by the EPA at 40 CFR 70.2 or any subsequent amendments thereto. In general, the potential to emit is the maximum aggregate capacity of a source operation or of a facility to emit an air contaminant under its physical and operational design. Any physical or operational limitation on the capacity of a source operation or a facility to emit an air contaminant, including any limitation on fugitive emissions as a result of any applicable requirement, control apparatus, and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design, if the limitation is Federally enforceable. Unless otherwise indicated, source- related fugitive emissions shall be included in the determination of potential to emit. ***If the owner or operator is using DER credits pursuant to the "permit insurance" provisions at N.J.A.C. 7:27-30.14(d) and (e) for compliance, the increase in allowable emissions due to this use of DER credits shall be included in the determination of potential to emit for the duration of the use period.*** However, the determination shall not include *[consideration of]* the holding of any of the following by the owner or operator: emission reductions that are banked pursuant to N.J.A.C. 7:27-18.8, DER credits generated pursuant to N.J.A.C. 7:27-30.4, or NO_x allowances allocated pursuant to N.J.A.C. 7:27-31.7.

...

7:27-8.3 General provisions

(a)-(j) (No change.)

(k) No approval by the Department of a change to a permit is required for a permittee to use DER credits for compliance in accordance with N.J.A.C. 7:27-30. However, if DER credits are to be used for compliance with emission offset requirements under N.J.A.C. 7:27-18 and 30.14(g), the permit must specifically allow such use.

(l) In accordance with N.J.A.C. 7:27-30.14(a)*[6 and 7]* ***5 and 6***, a permittee shall compensate for the following through use of DER credits:

1. Failure to perform timely testing ***in accordance with N.J.A.C. 7:27-8.28*** of the VOC and/or NO_x emissions of equipment or control apparatus; and
2. Operation of equipment, if the permittee has failed to install or operate a control apparatus required by a permit.

(m)-(n) (No change.)

(o) Notwithstanding (c) above, a permittee may use DER credits to comply with a VOC or NO_x permit limit established pursuant to this subchapter, provided that:

1. Such use is allowed pursuant to N.J.A.C. 7:27-30.14(a)3 ***[and 5]***, (b), (c)6 and (d);

2. The permittee conforms with the applicable seven-day-notice requirements at N.J.A.C. 7:27-8.20;
3. If the use is a “permit insurance” use, the permittee conforms with the conditions for “permit insurance” uses set forth at N.J.A.C. 7:27-30.14(d); and
4. The permittee complies with all applicable requirements for DER credit use set forth at N.J.A.C. 7:27-30.

7:27-8.4 Applications

(a)-(q) (No change.)

- *[(r) If a permit includes a BACT or LAER limit or a limit which reflects that the equipment and/or control apparatus incorporate advances in the art of air pollution control pursuant to the requirements of N.J.A.C. 7:27-8.4(d) or 22.35(a), and if the permittee submits an application for a permit revision which would replace the limit with a less stringent limit, the Department shall approve the proposed new limit only if:
1. The equipment and/or control apparatus is not able to operate in compliance with the originally established permit limit;
 2. The permittee has taken all actions technically feasible to reduce the emissions from the equipment and/or control apparatus in an effort to comply with the original permit limit, and the Department agrees that there are no reasonably available means by which it would be feasible to further reduce the emissions;
 3. The proposed higher permit limit shall not result in emissions that may cause any of the following:
 - i. A violation of any State or Federal ambient air quality standard;
 - ii. Any exceedance of a PSD increment as defined in 40 CFR Part 52;
 - iii. An increase in ambient air concentration that equals or exceeds the significant air quality effect level, as set forth in Table 1 of N.J.A.C. 7:27-18.4(a), in a nonattainment area for any air contaminant; or
 - iv. A contravention of any other criterion, the purpose of which is to protect human health and welfare and the environment, established by the Department by rule or in a permit, operating certificate, or order applicable to the permittee, issued pursuant to the New Jersey Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq.;

4. The permittee shall compensate in full, in accordance with N.J.A.C. 7:27-30.14(a)5, for the increase in allowable emissions of the equipment and/or control apparatus, and such compensation shall continue for the shorter of the following:
 - i. The life of the equipment and/or control apparatus; or
 - ii. Until the permit is again revised, and a new permit limit which does not exceed the originally established limit is approved; and
5. The requirement to compensate in full through use of credits, set forth in (r)4 above, shall be included as a condition of the revised permit.]*

[(s).] ***(r)*** If the applicant intends to use DER credits to fulfill emission offset requirements under N.J.A.C. 7:27-18, the applicant shall indicate this in the permit application in accordance with N.J.A.C. 7:27-30.14(g).

[(t)] ***(s)*** (No change in text.)

7:27-8.17 Changes to existing permits and certificates

(a)-(d) (No change.)

- (e) No change to a permit is required for a permittee to use DER credits for compliance in accordance with N.J.A.C. 7:27-30. However, if DER credits are to be used for compliance with emission offset requirements under N.J.A.C. 7:27-18 and 7:27-30.14(g), the permit must specifically allow such use. If the permit does not allow such use, a permit revision under N.J.A.C. 7:27-8.18 is required.

7:27-8.20 Seven-day-notice changes

(a) (No change.)

(b) A seven-day-notice may be used for the following:

1. A change made to a permitted source which meets all three of the following requirements:
 - i. The action is a physical or operational change that is outside the scope of activities allowed by the permit;
 - ii. The action has the potential to result in an increase in actual emissions, but will not increase emissions over the allowable limits in the permit and certificate; and

- iii. The action will not alter stack parameters or characteristics so as to cause the ground level concentration of an air contaminant to increase in that portion of the atmosphere, external to buildings, to which the general public has access;
 - 2. Notice indicating that an applicant plans to act at risk under the authority of N.J.A.C. 7:27-8.24 or 8.25; or
 - 3. Notice of *[an]* ***a potential*** increase in the actual emissions of an air contaminant included in the permit *[, including an increase]* due to compliance using DER credits under N.J.A.C. 7:27-30, such as for "permit insurance" pursuant to N.J.A.C. 7:27-30.14(d).
- (c) (No change.)
- (d) A permittee shall not under (b)1 above use a seven-day-notice for a change which shall:
- 1.-2. (No change.)
- (e) The Department shall separately evaluate each change [separately] submitted under (b)1 above to determine its effect on actual emissions. If a change, evaluated alone, would cause an increase in actual emissions (but not to a level over permit allowables), it shall be processed through a seven-day-notice, regardless of whether other, simultaneous changes might reduce emissions to compensate for the increase. For example, if a permittee plans two changes, one increasing emissions (but not to a level over permit allowables), and one reducing emissions by the same amount, the change which increases emissions shall be processed through a seven-day-notice. Similarly, the Department shall separately evaluate each change [separately] submitted under (b)1 above to determine its effect on allowable emissions. If a change, evaluated alone, would cause a permit limit to be exceeded, it may not be processed through a seven-day-notice, regardless of whether other, simultaneous changes might reduce emissions to compensate for the increase. For example, if a permittee plans two changes, one increasing emissions over a permit limit, and one reducing emissions by the same amount, the change which increases emissions may not be processed through a seven-day-notice. Instead, the change shall be submitted as a permit revision under N.J.A.C. 7:27-8.18.
- (f)-(h) (No change.)

7:27-8.25 Special provisions for pollution control equipment or pollution prevention process modifications

- (a)-(c) (No change.)
- (d) An applicant who acts under the authority of this section assumes all risks for the actions. If an applicant pursues activities under this section, and the Department does not approve the

activities as proposed in the application, the applicant may be required to reverse the activities, and may be liable for penalties for the activities under (h) or (i) below. ***All emission reductions resulting from the disapproved activities shall not be eligible for DER credit generation.***

(e)-(h) (No change.)

7:27-8.28 Delay of testing

(a) A permittee *[who seeks]* ***may seek*** the approval of the Department for a delay in testing required pursuant to N.J.A.C. 7:27-8.4(f), 8.7(f), or 8.13(d) ***. In such case the following shall apply:**

- **1. The permittee*** shall submit a request for such approval on paper to the address given at N.J.A.C. 7:27-8.4(b)*[.]* **;**
- **2. A request for a delay in testing shall include the following information, at a minimum:**
 - **i. Justification why the delay in testing is necessary;**
 - **ii. A proposed test date or a proposed set of conditions that would define a future test date; and**
 - **iii. Certification signed by the responsible party at the facility and in accordance with the certification procedures at N.J.A.C. 7:27-1.39.**
- **3. The Department shall approve each initial request for a delay in testing of up to 90 days; the permittee may request this initial delay for any reason that the permittee has determined is valid. However, if the permittee again requests a subsequent delay in testing, the Department shall approve such further delay only if one of the following criteria is met:**
 - **i. The test was delayed due to a Departmental delay, such as if the protocol is still under review/negotiation, but only if the protocol was submitted in a timely fashion;**
 - **ii. The equipment which is to be tested had not been installed; or**
 - **iii. There is some other impediment to the testing, which, based on its review of documentation submitted by the permittee, the Department has determined is a valid reason for further delaying the testing. This determination shall be made by the appropriate regional enforcement office.***

- (b) In a request for a delay of testing, submitted pursuant to (a) above, a permittee may include a waiver of its right to assert that its emissions during the period of delay were any different than the emissions measured by the test when performed (or, if applicable, the emissions calculated based on the measurements taken).
- (c) A permittee who delays testing (even if the delay is approved by the Department) is subject to N.J.A.C. 7:27-30.14(a)*[6]* *5*, pursuant to which the permittee may be required to provide compensation through use of DER credits.

7:27-16.5 Marine tank vessel loading and ballasting operations

- (a) (No change.)
- (b) The owner or operator of any marine terminal having an annual throughput of 6,000,000 gallons (22,710,000 liters) or greater for loading gasoline as cargo into marine tank vessels or having a daily throughput, between May 1 and September 30, of 60,000 gallons or greater for loading gasoline as cargo into marine tank vessels shall install and operate a control apparatus, which reduces the total VOC emissions to the outdoor atmosphere resulting from gasoline transfers at the facility by no less than 95 percent by weight.
- (c)-(k) (No change.)

7:27-16.17 Facility-specific VOC control requirements

- (a)-(l) (No change.)
- (m) As a condition of an approval issued under this section, the Department may impose requirements upon the operation of the source operation(s) necessary to minimize any adverse impact upon human health, welfare and the environment. As a condition of an approval of any application for an alternative VOC control plan submitted to the Department pursuant to this section after August 2, 1996, the owner or operator shall use discrete emission reductions (DERs) in accordance with N.J.A.C. 7:27-30 to compensate for the difference between the emissions allowed under the alternative VOC control plan and under the emission limit which would otherwise apply under this subchapter.
- (n)-(t) (No change.)

7:27-18.5 Standards for use of emission reductions as emission offsets

- (a)-(g) (No change.)

- (h) Reductions in emissions of VOC or NO_x between October 1 and April 30 inclusive, may not be used to offset increased emissions of VOC or NO_x emitted between May 1 and September 30 inclusive.

(i)-(k) (No change.)

7:27-18.11 Interface with other trading programs

- (a) The Open Market Emissions Trading Program at N.J.A.C. 7:27-30 establishes the rules for the generation, trading, use, and voluntary retirement of DER credits. Emission reductions banked pursuant to N.J.A.C. 7:27-18.8 may be converted to DER credits under the following conditions:

1. The person converting the emission reductions is their holder of record in the New Jersey emission offset bank;
2. The change which caused the emission reductions to commence was first implemented after *[May 1, 1995]* **August 2, 1996***;
3. The person who applied for the banking of the emission reductions under N.J.A.C. 7:27-18.8 would be eligible under N.J.A.C. 7:27-30.4(a) to be the generator of DER credits based on those emission reductions;
4. The emission reductions are eligible under N.J.A.C. 7:27-30 to be the basis for a DER credit. (Emission reductions that result from a shutdown or curtailment, for example, may not be used as the basis of a DER credit);
5. The last day of the generation period is no earlier than 90 days before the date of submission of the Notice of Generation (the provisions for late submittal at N.J.A.C. 7:27-30.7(b) shall not apply; for example, to convert emission reductions realized during a generation period that ends on January 1, 1999, a complete Notice of Generation must be submitted by April 1, 1999);
6. The holder of the emission reductions submits to the Department's emission offset bank and the registry a Notice of Generation which meets the requirements of N.J.A.C. 7:27-30.7; **and***

[7. Any applicable discount under N.J.A.C. 7:27-18.8(e) shall be applied prior to converting the emission reductions to DER credits; and]

[8.] **7.*** The number of DER credits generated is calculated in accordance with N.J.A.C. 7:27-30.5 and the following:

- i. In determining the lowest allowable emission rate which applies in accordance with N.J.A.C. 7:27-30.7(d)1i, a limit established in a permit shall

not be taken into account, unless it is required by an underlying Federal or State rule, including (if applicable) the requirement at N.J.A.C. 7:27-8.12 to document state of the art or the requirement at N.J.A.C. 7:27-22.35 to incorporate advances in the art of air pollution control; and

ii. The historic baseline rate used in the calculation shall be determined in accordance with N.J.A.C. 7:27-30.7(d)3; except that the five years prior to the banking of the reductions as emission offsets (rather than the five years prior to the generation period) may be used as the basis for deriving the historic baseline rate if:

(1) The emission reductions were banked for future application as emission offsets pursuant to N.J.A.C. 7:27-18.8 prior to (the date which is the operative date of these amendments); and

(2) The Notice of Generation for the first generation period is submitted no later than (the date which is one year plus 90 days after the operative date of these amendments).

(b) The provisions at N.J.A.C. 7:27-18.8(e), which require that the amount of emission reductions be reduced to reflect any new emission limits applicable to the generator source that are established under a State or Federal statute, rule, or regulation, shall be applied to emission reductions which were banked pursuant to N.J.A.C. 7:27-18.8 and which are being converted to DER credits.

7:27-19.2 Purpose, scope and applicability

(a)-(e) (No change.)

(f) The owner or operator of a facility containing any equipment or source operation listed in (b) above may apply to the Department for an exemption from this subchapter. The *[procedure for obtaining the Department's approval of]* ***following conditions apply to such exemptions:**

1. An owner or operator shall apply for* such an exemption *[is]* ***in accordance with the procedures*** set forth in N.J.A.C. 7:27-19.14 *[*]* **;**

2.* The Department shall approve *[the]* ***an*** exemption only if the facility satisfies the ***following*** requirements *[of (f)1 and 2 below]*:

[1.] ***i.*** (No change.)

[2.] ***ii.*** The facility's potential to emit NO_x on any calendar day from May 1 to September 30 is less than 137 pounds per day *[*]* **;** **and**

- 3. If an exemption was approved for any equipment prior to June 6, 2000, but that equipment no longer qualifies for such an exemption due to amendments to this section operative on June 6, 2000, the owner or operator of such equipment shall comply with the requirements in this subchapter applicable to that equipment by October 6, 2001.***

7:27-19.6 Emissions averaging

- (a) (No change.)
- (b) An owner or operator of two or more source operations or items of equipment may request that the Department authorize an averaging plan for two or more averaging units designated by the owner or operator. The owner or operator seeking authorization for averaging shall submit a written application to the Department in accordance with N.J.A.C. 7:27-19.14(a), (b) and (c). The owner or operator shall include the following information in the application:
- 1.-5. (No change.)
6. A demonstration that in operating at the peak daily heat input rate of all the averaging units together or of the designated set would satisfy the following equation:
- $$TPEE \leq TPAE$$
- where:
- i. (No change.)
- ii. TPAE means total peak allowable emissions, and is equal to the sum of the total peak allowable emissions for each averaging unit or the peak allowable emissions of the designated set. The peak allowable emissions for each averaging unit equals the applicable NO_x emission limit set forth in N.J.A.C. 7:27-19.4, 19.5, 19.7, 19.8, 19.9, 19.10 or 19.20 for that averaging unit, multiplied by the peak daily heat input rate listed in (b)5 above for that averaging unit. The TPAE of the designated set means the applicable NO_x emission limit for each averaging unit multiplied by the heat input rate to that averaging unit at the time of the peak daily heat input rate to the designated set. For an averaging unit that is included in a seasonal fuel switching plan under N.J.A.C. 7:27-19.20, the applicable NO_x emission limit from May 1 through September 30 is the limit established under N.J.A.C. 7:27-19.20(d) or 19.20(g)3 as applicable, and the applicable NO_x emission limit from October 1 through April 30 is the limit established under N.J.A.C. 7:27-19.20(g)4;
- 7.-9. (No change.)
- (c) (No change.)

- (d) The owner or operator of the designated set shall operate each unit in the designated set in compliance with the following:

1. (No change.)
2. The sum of the actual NO_x emissions from all averaging units in the designated set, averaged over the appropriate time period specified in (f) below, shall not exceed the sum of the allowable NO_x emissions for all averaging units in the designated set. The allowable NO_x emissions for each averaging unit is calculated according to the following formula:

$$\text{Allowable NO}_x \text{ emissions} = H \times AL$$

where:

- i. (No change.)
- ii. AL means the applicable NO_x emission limit set forth in N.J.A.C. 7:27-19.4, 19.5, 19.7, 19.8, 19.9, 19.10 or 19.20 for that averaging unit, expressed in pounds of NO_x per million BTUs. For an averaging unit that is included in a seasonal fuel switching plan under N.J.A.C. 7:27-19.20, the applicable NO_x emission limit from May 1 through September 30 is the limit established under N.J.A.C. 7:27-19.20(g)3, and the applicable NO_x emission limit from October 1 through April 30 is the limit established under N.J.A.C. 7:27-19.20(g)4.

- (e) (No change.)

- (f) The owner or operator shall demonstrate compliance with this section as follows:

1. The owner or operator shall determine whether the operations of the designated set and of each averaging unit comply with this section for each calendar day during the period beginning May 1 and ending September 30 of each year. The owner or operator shall base the calculations required under (d)1 and 2 above upon the heat input and NO_x emissions for each averaging unit over the entire calendar day. The owner or operator shall perform the calculations and make a record of them within three working days after the date which is the subject of the calculation; and
2. The owner or operator shall determine whether the operations of the designated set and of each averaging unit comply with this section for the 30-day period ending on October 1 of each year, and the 30-day period ending on each subsequent day through April 30 of the following year. The owner or operator shall base the calculations required under (d)1 and 2 above upon the heat input and NO_x emissions for each averaging unit over the entire 30-day period. The owner or operator shall perform the calculations and make a record of them by the 15th day of each month, for all 30-day periods ending in the preceding month.

- (g) (No change.)
- (h) The owner or operator of a designated set shall submit quarterly reports to the Department on April 30, July 30, October 30 and January 30 of each year, for the immediately preceding calendar quarter ending March 31, June 30, September 30 and December 31, respectively. The owner or operator shall submit the report to the Department at the address set forth in (l) below. The owner or operator shall include the following information in the quarterly report:
 - 1.-3. (No change.)
 - 4. In the report for the quarter ending September 30, the compliance determination required under (f)1 above for each calendar day from July 1 through September 30; and
 - 5. (No change.)
- (i)-(j) (No change.)

7:27-19.13 Facility-specific NO_x emissions limit

- (a)-(h) (No change.)
- (i) As a condition of an approval issued under this section, the Department may impose requirements upon the operation of any of the equipment or source operations at the subject facility listed pursuant to (b)1 or (c)1 above necessary to minimize any adverse impact upon human health, welfare and the environment. As a condition of an approval of any application for an alternative maximum allowable NO_x emission rate submitted to the Department pursuant to this section after August 2, 1996, the owner or operator shall use discrete emission reductions (DERs) in accordance with N.J.A.C. 7:27-30 to compensate for the difference between the emissions allowed under the alternative maximum allowable NO_x emission rate and under the emission limit which would otherwise apply under this subchapter.
- (j)-(p) (No change.)

7:27-19.19 Recordkeeping and recording

- (a)-(c) (No change.)
- (d) For each combustion source listed in (c) above, the owner or operator shall record the following information for each day from May 1 through September 30, for the 30-day period ending on October 1, and for each 30-day period ending on each subsequent day through April 30 of the following year:

1.-2. (No change.)

3. The amount, type and higher heating value of each fuel consumed during each day from May 1 through September 30, during the 30- day period ending on October 1, and during each 30-day period ending on each subsequent day through April 30 of the following year;

4.-6. (No change.)

(e)-(g) (No change.)

7:27-19.20 Fuel switching

(a)-(f) (No change.)

(g) Beginning in calendar year 1995, the owner or operator shall operate each combustion source included in the plan in compliance with the following:

1. (No change.)

2. From May 1 through September 30 of each year, the combustion source shall combust the cleaner fuel exclusively, or derive a higher percentage of its total heat input from cleaner fuel than the percentage it derived from May 1 through September 30 of the base year;

3. During each calendar day from May 1 through September 30 of each year, the combustion source shall emit NO_x at an average rate no higher than the maximum allowable NO_x emission rate determined under (d) above; provided however, that a coal-fired, wet-bottom utility boiler that uses the tangential or face firing method, the maximum allowable NO_x emission rate shall be 1.0 lb/MMBTU;

4.-5. (No change.)

(h) (No change.)

(i) The owner or operator shall demonstrate compliance with this section as follows:

1. Each calendar day from May 1 through September 30 of each year, the owner or operator shall determine whether each combustion source included in the plan is in compliance with the applicable daily NO_x emission limit under (g)3 above. The owner or operator shall perform the calculations necessary to verify compliance and make a record of them within three working days after the date that is the subject of the calculation;

2. For the 30-day period ending on October 1, and for each 30-day period ending on each subsequent day until April 30 of the following year, the owner and operator shall determine whether each combustion source included in the plan is in compliance with the applicable 30-day NO_x emission limit under (g)4 above; and

3. (No change.)

(j)-(l) (No change.)

7:27-19.21 Phased compliance--repowering

(a)-(f) (No change.)

- (g) A repowering plan (and agreement to repower) approved under this section is not required to be submitted to EPA as a proposed revision to New Jersey's State Implementation Plan, if the plan provides that NO_x emissions from each combustion source included in the plan will be controlled during the interim period through one of the following methods:

1. (No change.)
2. The use of selective non-catalytic reduction from May 1 through September 30 of each year.

(h) (No change.)

7:27-19.22 Phased compliance - impracticability of full compliance by May 31, 1995

(a)-(d) (No change.)

- (e) In determining whether compliance with the applicable NO_x emission limit under this subchapter by May 31, 1995 is impracticable, the Department shall apply the following criteria:

- 1.-3. (No change.)
4. The nature, extent and probability of any harm to public safety or welfare that could result from accelerating construction and/or installation in order to attain compliance by May 31, 1995. For example, if it were probable that *[an electric generating utility]* **the owner or operator of the electric generating unit*** could not cause all of its electric generating units to attain compliance by that date without subjecting a substantial number of customers to voltage reductions and/or interruptions in electric service, that fact would be relevant in establishing impracticability.

(f)-(g) (No change.)

7:27-19.23 Phased compliance--use of innovative control technology

(a)-(d) (No change.)

(e) An owner or operator who has obtained the Department's approval of an innovative control technology plan shall:

1.-9. (No change.)

10. Compensate, through use of DER credits in accordance with N.J.A.C. 7:27-30, for the amount (if any) by which the source's actual NO_x emissions after the date on which the innovative control technology is required to be implemented (as stated in (c)5v above) exceed the emissions which would have resulted if the source had attained the rate of NO_x emissions stated in (c)3 above.

(f)-(h) (No change.)

7:27-19.24 MEG alerts

(a) (No change.)

(b) Within two working days after the end of the MEG alert, the *[electric generating utility]* ***owner or operator of the electric generating unit*** shall notify the Department by way of a report confirming the occurrence of the MEG alert. The *[electric generating utility]* ***owner or operator of the electric generating unit*** shall certify the report in accordance with N.J.A.C. 7:27-1.39. In the report, the *[electric generating utility]* ***owner or operator of the electric generating unit*** shall include the following information:

1. Information sufficient to identify each electric generating unit that operated at emergency capacity, including a brief description (for example, "dry-bottom coal-fired utility boiler"), its location, its permit number, any other identifying numbers, and any other information necessary to distinguish it from other equipment ***also*** owned or operated by the *[utility]* ***owner or operator of the electric generating unit***;
2. The date and time at which the *[electric generating utility]* ***owner or operator of the electric generating unit*** received notice from the load dispatcher, directing the *[utility]* ***owner or operator*** to operate one or more electric generating units at emergency capacity;
3. (No change.)

4. The date and time at which the *[electric generating utility]* ***owner or operator of the electric generating unit*** received notice from the load dispatcher, advising the *[utility]* ***owner or operator*** that it could cease operating its electric generating units at emergency capacity;
 5. For each electric generating unit listed in (b)1 above, the date and time at which the *[electric generating utility]* ***owner or operator*** ceased operating the electric generating unit at emergency capacity;
 - 6.-7. (No change.)
 8. A description of the method by which the *[electric generating utility]* ***owner or operator of the electric generating unit*** has provided or will provide compensatory reductions in NO_x emissions as required under (c) below.
- (c) The *[electric generating utility]* ***owner or operator of the electric generating unit*** shall use DER credits in accordance with N.J.A.C. 7:27-30 to compensate for the excess NO_x emissions during the MEG alert. The ratio of the amount of NO_x emission increases required to be compensated for with credits to the amount of the excess NO_x emissions calculated under (b)6 above shall be 1.3:1.

7:27-19.25 Exemption for emergency use of fuel oil

- (a) (No change.)
- (b) The exemption under (a) above is available only for a combustion source that uses natural gas as its primary fuel, or is seasonally combusting natural gas pursuant to a plan approved under N.J.A.C. 7:27-19.14 and 19.20. For a combustion source that uses natural gas as its primary fuel, the exemption under (a) above is available at any time during the year. For a combustion source that is seasonally combusting natural gas, the exemption under (a) above is available only from May 1 through September 30. This exemption is also available for those combustion sources which combust refinery gas as a primary fuel.
- (c) (No change.)
- (d) The owner or operator shall keep records of curtailment periods and incorporate such records into the required quarterly reports submitted to the Department. Such records shall include the following information:
 1. Information sufficient to identify each combustion source for which the owner or operator claims an exemption under this section, including a brief description of the source (for example, "dry-bottom coal-fired utility boiler"), its location, its permit number, any other identifying numbers, and any other information necessary to distinguish it from other equipment ***also*** owned or operated by the *[utility]* ***owner or operator of the electric generating unit***;

2.-4. (No change.)

7:27-22.1 Definitions

The following words and terms, when used in this subchapter, have the meanings given below unless the context clearly indicates otherwise.

...

"Potential to emit" means the same as that term is defined by the EPA at 40 CFR §70.2 or any subsequent amendments thereto. In general, the potential to emit is the maximum aggregate capacity of a source operation or of a facility to emit an air contaminant under its physical and operational design. Any physical or operational limitation on the capacity of a source operation or a facility to emit an air contaminant, including any limitation on fugitive emissions as a result of any applicable requirement, control apparatus, and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design, if the limitation is Federally enforceable. Unless otherwise indicated, fugitive emissions shall be included in the determination of potential to emit. ***If the owner or operator is using DER credits pursuant to the "permit insurance" provisions at N.J.A.C. 7:27-30.14(d) and (e) for compliance, the increase in allowable emissions due to this use of DER credits shall be included in the determination of potential to emit for the duration of the use period.*** However, the determination shall not include ***the holding of*** any ***[banked emission reductions that are held]*** ***of the following*** by the owner or operator ***: emission reductions that are banked pursuant to N.J.A.C. 7:27-18.8, DER credits generated pursuant to N.J.A.C. 7:27-30.4, or NO_x allowances allocated pursuant to N.J.A.C. 7:27-31.7***.

...

7:27-22.3 General provisions

(a)-(ss) (No change.)

(tt) Notwithstanding (qq) above, a permittee may use DER credits to comply with a VOC or NO_x permit limit established pursuant to this subchapter, provided that:

1. Such use is allowed pursuant to N.J.A.C. 7:27-30.14(a)3 ***[and 5]***, (b), (c)6 and (d);
2. The permittee conforms with the applicable seven-day-notice requirements at N.J.A.C. 7:27-22.22;
3. If the use is a "permit insurance" use, the permittee conforms with the conditions for "permit insurance" uses set forth at N.J.A.C. 7:27- 30.14(d); and

4. The permittee complies with all applicable requirements for DER credit use set forth at N.J.A.C. 7:27-30.

*[(uu) If a permit includes a BACT or LAER limit or a limit which reflects that the equipment and/or control apparatus incorporate advances in the art of air pollution control pursuant to the requirements of N.J.A.C. 7:27-8.4(d) or 22.35(a), and if the permittee submits an application for a permit modification which would replace the limit with a less stringent limit, the Department shall approve the proposed new limit only if:

1. The equipment and/or control apparatus is not able to operate in compliance with the originally established permit limit;
2. The permittee has taken all actions technically feasible to reduce the emissions from the equipment and/or control apparatus in an effort to comply with the original permit limit, and the Department agrees that there are no reasonably available means by which it would be feasible to further reduce the emissions;
3. The proposed higher permit limit will not result in emissions that may cause any of the following:
 - i. A violation of any State or Federal ambient air quality standard;
 - ii. Any exceedance of a PSD increment as defined in 40 CFR Part 52;
 - iii. An increase in ambient air concentration that equals or exceeds the significant air quality effect level, as set forth in Table 1 of N.J.A.C. 7:27-18.4(a), in a nonattainment area for any air contaminant; or
 - iv. A contravention of any other criterion, the purpose of which is to protect human health and welfare and the environment, established by the Department by rule or in a permit, operating certificate, or order applicable to the permittee, issued pursuant to the New Jersey Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq.;
4. The permittee shall compensate in full, in accordance with N.J.A.C. 7:27-30.14(a)5, for the increase in allowable emissions of the equipment and/or control apparatus, and such compensation shall continue for the shorter of the following:
 - i. The life of the equipment and/or control apparatus; or
 - ii. Until the permit is again revised, and a new permit limit which does not exceed the originally established limit is approved; and
5. The requirement to compensate in full through use of credits shall be included as a condition of the revised permit.]*

[(vv)] ***(uu)*** In accordance with N.J.A.C. 7:27-30.14(a) ***[6 and 7]* *5 and 6***, a permittee shall compensate for the following through use of DER credits:

1. Failure to perform timely testing ***in accordance with N.J.A.C. 7:27-22.18(k)*** of the VOC and/or NO_x emissions of equipment or control apparatus; and
2. Operation of equipment, if the permittee has failed to install or operate a control apparatus required by a permit.

[(ww)] ***(vv)*** The following information is available from the Department:

1. (No change.)
2. Technical manuals may be requested from the Department at the following address:

New Jersey Department of Environmental Protection
Map Sales and Publications Office
PO Box 417
Trenton, New Jersey 08625-0417
Telephone: (609) 777-1039

7:27-22.18 Source emissions testing and monitoring

(a)-(j) (No change.)

(k) A permittee ***[who seeks]* *may seek*** the approval of the Department for a delay in testing required pursuant to a permit and/or this section ***. In such case the following shall apply:**

- 1. The permittee*** shall submit a request for such approval on paper to the address given at N.J.A.C. 7:27- 22.3(t) and to the appropriate regional enforcement office indicated in ***[(k)1 through 4]* *i. through iv.*** below ***[.]* *i.***

[1.]* *i. If the permitted source is located in Mercer, Middlesex, Monmouth, Ocean, or Union County:

Department of Environmental Protection
Central Regional Office
Air and Environmental Quality Compliance & Enforcement
Horizon Center, PO Box 407
Robbinsville, NJ 08625-0407.

[2.]* *ii. If the permitted source is located in Bergen, Essex, or Hudson County:

Department of Environmental Protection
Metropolitan Regional Office
Air and Environmental Quality Compliance & Enforcement
2 Babcock Place

West Orange, NJ 07052-5504.

[3.] ***iii.*** If the permitted source is located in Hunterdon, Morris, Passaic, Somerset, Sussex, or Warren County:

Department of Environmental Protection
Northern Regional Office
Air and Environmental Quality Compliance & Enforcement
1259 Route 46 East, Building 2
Parsippany-Troy Hills, NJ 07054-4191.

[4.] ***iv.*** If the permitted source is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, or Salem County:

Department of Environmental Protection
Southern Regional Office
Air and Environmental Quality Compliance & Enforcement
One ***[Porter]* *Port*** Center
2 Riverside Drive, Suite 201
Camden, NJ ***[08102]* *08103***.

[5.] ***2.*** A request for a delay in testing shall include the following information, at a minimum:

- i. Justification why the delay in testing is necessary;
- ii. A proposed test date or a proposed set of conditions that would define a future test date; and
- iii. Certification signed by the responsible party at the facility and in accordance with the certification procedures at N.J.A.C. 7:27- 1.39.

[6.] ***3.*** The Department shall approve ***[the]* *each initial*** request for a delay in testing ***of up to 90 days; the permittee may request this initial delay for any reason that the permittee has determined is valid. However, if the permittee again requests a subsequent delay in testing, the Department shall approve such further delay only*** if one of the following criteria is met:

- i. The test was delayed due to a Departmental delay, such as if the protocol is still under review/negotiation*, **but*** only if the protocol was submitted in a timely fashion;
- ii. The equipment which is to be tested had not been installed; or
- iii. ***[The equipment is not in operation or is not operating at its maximum permitted level. In the latter case, the test might be required after an initial extension regardless of production rate with additional testing required once the maximum permitted level is achieved. This determination shall be made by the appropriate regional enforcement office.]* *There is some other**

impediment to the testing, which, based on its review of documentation submitted by the permittee, the Department has determined is a valid reason for further delaying the testing.*

- (l) In a request for a delay of testing, submitted pursuant to (k) above, a permittee may include a waiver of its right to assert that its emissions during the period of delay were any different than the emissions measured by the test when performed (or, if applicable, the emissions calculated based on the measurements taken).
- (m) A permittee who delays testing (even if the delay is approved by the Department) is subject to N.J.A.C. *[7:27-30.14(a)6]* ***7:27-30.14(a)5***, pursuant to which the permittee may be required to provide compensation through use of DER credits.

7:27-22.22 Seven-day-notice changes

(a)-(b) (No change.)

- (c) Except as provided at (b) above, any of the following changes may be made as seven-day-notice changes, pursuant to the procedures of this section:

1.-3. (No change.)

Recodify existing 5. and 6. as 4. and 5. (No change in text.)

- (d) In addition to the items listed at (c) above, a seven-day-notice change may be used for the following, pursuant to the procedures of this section:

- 1. A change to an existing significant source operation, or construction or installation of any new significant source operation, at a facility with an approved facility-wide permit, as defined at N.J.A.C. 7:27-22.1, provided that:

- i. (No change in text.)

- ii. The proposed change, construction, or installation is either:

Recodify existing i. and ii. as (1) and (2) (No change in text.)

- iii. The proposed change, construction, or installation does not cause any of the following:

Recodify existing i.-iii. as (1)-(3) (No change in text.)

(4) The addition of a new production process; or

2. Notice of an increase in the actual emissions of an air contaminant included in the permit, including an increase compensated for through use of DER credits under N.J.A.C. 7:27-30, such as for "permit insurance" pursuant to N.J.A.C. 7:27-30.14(d).

(e)-(g) (No change.)

- (h) To be administratively complete, any notice submitted pursuant to (d)1 above for a modification of equipment or control apparatus, or installation of new equipment or control apparatus, at a facility with an approved facility-wide permit, shall include a Pollution Prevention Plan Modification or Pollution Prevention Assessment pursuant to N.J.A.C. 7:1K-3 and 4 in addition to the items required in (g) above.
- (i) To be administratively complete, a notice submitted pursuant to (d)2 above for compliance with a permit limit through use of DER credits, under the "permit insurance" provisions of the open market emission trading rules at N.J.A.C. 7:27-30, shall be a copy of the Notice of Intent to Use submitted for the use in accordance with N.J.A.C. 7:27-30.15 and 19.

(j)-(n) (No change.)

7:27-30.1 Purpose and scope

- (a) This subchapter establishes procedures and standards for the Open Market Emissions Trading Program.
- (b) This subchapter includes procedures and standards for the generation, banking, transfer, voluntary retirement, invalidation, and cancelation of discrete emission reduction credits (DER credits) that are based on reduction of emissions of volatile organic compounds (VOC) and oxides of nitrogen (NO_x). It also includes procedures and standards for compliance with certain VOC and NO_x air pollution control requirements through the use of DER credits.
- (c) This subchapter also includes procedures and standards for the generation, banking, transfer, voluntary retirement, invalidation, and cancelation of discrete emission reduction credits (DER credits) that are based on reduction of emissions of greenhouse gases (GHG).
- (d) Nothing in this subchapter affects the applicability of the requirements of any other law, regulation, order or permit. For example, if N.J.A.C. 7:27-8 or 22 would require that a permit be revised or modified to reflect a physical or operational change that results in an emission increase, that permit revision or modification would still be required regardless of whether the change arose from the generation or use of DER credits.

7:27-30.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Activity" or "activity level" means, in reference to an emissions source, the duration or degree of its operation during a selected period of time, expressed in units that correspond to the units used in the denominator of an emission rate which applies to the source. For example:

1. If the emission rate is expressed as emissions per hour of operation, the source's activity would be expressed as the number of hours of operation in the selected period of time; or
2. If the emission rate is expressed as emissions per BTU of fuel consumed, the source's activity would be expressed as the number of BTUs of fuel consumed during the selected period of time.

...

"AP-42" means the manual, published by the EPA, entitled "Compilation of Air Pollutant Emission Factors," which is incorporated herein by reference, as amended and supplemented. This document may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, (703) 487-4650; or from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, (202) 783-3228. In addition, this document can be downloaded electronically from the EPA's Technology Transfer Network Bulletin Board Service by dialing (919) 541-5742; or from the EPA website at <http://www.epa.gov/ttn/chief/ap42.html>.

...

"Area source" means a class of stationary sources or nonroad sources, where each source in the class is too small and/or too numerous to be individually listed in an emissions inventory submitted by the State to the EPA or in a facility's emission statement submitted pursuant to N.J.A.C. 7:27-21. An example of an area source is consumer and commercial products.

"Batch" means, with respect to DER credits, the set of DER credits included in a single Notice of Generation submitted to the registry. Such a set shall include all credits resulting from the implementation of a specific *[emission reduction]* ***generation*** strategy during a single generation period.

...

"BTU" means British thermal unit.

"Calendar quarter" means January 1 through March 31; April 1 through June 30; July 1 through September 30; or October 1 through December 31.

"Carbon equivalent" means the weight of a quantity of a greenhouse gas multiplied by its global warming potential and then also multiplied by the ratio of the molecular weight of carbon to that of carbon dioxide.

"Ceiling rate" means the user source's maximum allowable emission rate during the use period, when DER credits are being used for permit insurance. Such a rate will typically be higher

than the corresponding limit in the source's permit. A ceiling rate is selected and specified by the user and is set forth in the Notice of Intent to Use.

"Complete" means, with respect to a notice, containing all information, supporting documentation, statements, and certification required for such a notice under this subchapter.

...

"Curtailement" means a temporary or partial reduction in an emissions source's economic output. For the purposes of this subchapter, this term does not include either of the following reductions:

1. (No change.)
2. A reduction in the production of electricity that results from implementing electrical energy efficiency measures.

...

"DER credit" or "credit" means a tradable entity, based on discrete emission reductions which meet the applicable requirements in this subchapter at N.J.A.C. 7:27-30.4(e) or (f) and at N.J.A.C. 7:27-30.6. The value of such a credit shall be given in units of weight, such as pounds or tons.

There are three types of DER credits: VOC credits, NO_x credits, and GHG credits.

"Discrete emission reduction" means a quantity of emission reductions, given in units of weight such as pounds or tons, that were realized over a finite period of time and have been quantified in accordance with this subchapter.

"Economic output" means the goods and/or services which are produced by an emissions source during a specified period of time. Examples include quantity of products and product intermediates manufactured; the flux of useable energy, measured at the point of use, in units such as lumens of light, ton hours of cooling, British thermal units of thermal energy, or kilowatt hours of electricity; the number of square feet interior area illuminated, heated, or cooled to a given standard; or the number of miles a given number of individuals or a given weight or volume of materials are transported.

"Emissions source" means any mobile source, nonroad source, or stationary source.

...

"Fleet" means 10 or more vehicles under common ownership.

"Fugitive emissions" means any emissions of an air contaminant released directly or indirectly into the outdoor atmosphere which do not pass through any stack or chimney.

"Generation period" means that period of time during which a batch of DER credits is generated.

"Generator" means a person who generates one or more DER credits pursuant to this subchapter.

"Generator source" means any emissions source that generates emission reductions that are used as a basis for generation of DER credits.

"GHG credit" means a DER credit based on reductions of a greenhouse gas. One GHG credit has an assigned value of one metric ton (2,205 pounds) of carbon equivalent.

"Global warming potential" or "GWP" is the ratio of the global heat-trapping effect, both direct and indirect, of one mass unit of a gas to that of the same mass unit of carbon dioxide over a given period of time. The 100-year period recommended by the Intergovernmental Panel on Climate Change (IPCC) shall be used for the purposes of this subchapter. A list of the GWPs of greenhouse gases is provided in Appendix **[B]** **A** of this subchapter, incorporated herein by reference.

"Greenhouse gas" or "GHG" means any of the following gases: carbon dioxide (CO₂); methane (CH₄); nitrous oxide (N₂O); certain hydrofluorocarbons (HFC-23, HFC-125, HFC-134a, HFC-143a, HFC-152a, HFC-227ea, HFC-236fa, HFC-4310me_g); certain perfluorocarbons (CF₄, C₂F₆, C₄F₁₀, C₆F₁₄); and sulphur hexafluoride (SF₆).

...

"Hold" means to have the registry show that a DER credit is credited to one's account.

...

***"MEG alert" means a period in which one or more electric generating units are operated at emergency capacity at the direction of the load dispatcher, in order to prevent or mitigate voltage reductions or interruptions in electric service, or both. A MEG alert begins and ends as follows:**

- 1. An alert begins when one or more electric generating units are operated at emergency capacity after receiving notice from the load dispatcher, directing the electric generating unit to do so; and**
- 2. An alert ends when the electric generating unit ceases operating its electric generating units at emergency capacity.***

...

"Nonroad source" means a nonroad engine or nonroad vehicle, as defined at 42 U.S.C. §7550. Examples of nonroad sources include gasoline-fueled lawnmowers, dredging and land-moving equipment, and tractors used in farming.

"NO_x credit" means a DER credit based on reductions of NO_x. One NO_x credit has an assigned value of 100 pounds (that is, one-twentieth of a ton) of NO_x.

...

"Oxides of nitrogen" or "NO_x" means all oxides of nitrogen, except nitrous oxide (N₂O), as measured by test methods approved by the Department and EPA, such as the test methods set ***[fourth]* forth*** at 40 CFR Part 60 Appendix A, methods 7 through 7E.

...

"Permit insurance" means a method for a permittee to comply, through use of DER credits in accordance with N.J.A.C. 7:27-30.14(d), with a permit limit, including a limit on the amount of emissions, activity level, or hours of operation. Under this method, the reduced emissions required pursuant to a permit limit are assured of being obtained. However, instead of the permittee reducing the emissions of the ***[emission]* emissions*** source subject to the permit limit, the permittee relies on ***[voluntarily]* voluntary*** emission reductions from a different ***[emission]* emissions*** source, which are used as the basis for DER credits, to meet the emission reduction requirement. Generally, this method is for complying with a limit currently established in the current permit; however, ***,*** in some circumstances, if a permittee has submitted an application seeking a revised permit limit, this method may be used to comply with the limit that will be established when the Department acts on the permit application. The ***[three]* two*** classes of permit insurance authorized under this subchapter are set forth at N.J.A.C. 7:27-30.14(e).

...

"Quantification protocol" means a document setting forth the quantification guidance and methods needed for credit generation and credit use, including, but not limited to, the following:

1. For a Notice of Generation, determining the number of DER credits that have been generated by a generator source;
2. For a Notice of Intent to Use, determining the number of DER credits that a user shall hold when the notice is submitted; and
3. For a Notice of Use, determining the number of DER credits used.

...

"Registry" means the electronic database, designated by the Department, which records and tracks the generation, verification, transfer, voluntary retirement, use, and invalidation of DER credits.

"Retire" means, with respect to DER credits, to make a DER credit permanently unavailable for use.

"Shutdown" means the permanent cessation of production of an emissions source, such that it no longer has economic output or emissions. For the purposes of this subchapter, scrappage of mobile sources is not considered a shutdown.

...

"Stationary source" means generally any source of air contaminant emissions, except a mobile source or a nonroad engine or nonroad vehicle.

"Surplus" means, with respect to emission reductions used for the generation of DER credits, not required pursuant to any air quality emission limit or standard in any applicable State or Federal law, regulation, permit, or order and not relied upon in a SIP.

"Timely and Appropriate (T&A) Enforcement Response to High Priority Violations (HPVs)' guidance document" means the EPA guidance document signed by Eric Schaeffer, Director of the Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance, on December 22, 1998, and as may be amended and supplemented, incorporated by reference herein. For reference, excerpts from this guidance document are set forth herein in Appendix *C* *B*. However, if a discrepancy is found between the Appendix *C* *B* and the EPA document, the provisions of the EPA document shall prevail.

"Use period" means the period of time during which a user uses DER credits.

"Useful life" means the length of time that equipment or control apparatus can be expected, from the time it initially commences to operate, to continue to operate. For the purposes of this subchapter, ***in a case where the generation strategy is the replacement of equipment or control apparatus with lower-emitting equipment or control apparatus,*** this length of time shall be ***[determined in accordance with the first listed method that applies]* *presumed to end five years from the date the new equipment or control apparatus commences to operate.*** *[:

1. If the manufacturer provides a warranty for the useful life of the equipment, the length of time guaranteed by the warranty;
2. If standard industry information is available, the length of time shown by that information to be average or typical; and
3. Otherwise, the length of time over which the permittee depreciates the capital cost of the equipment or control apparatus.]*

...

"User source" means any emissions source for which the owner or operator seeks to use DER credits for compliance in accordance with this subchapter.

...

"VOC credit" means a DER credit based on reductions of VOC. One VOC credit has an assigned value of 100 pounds (that is, one-twentieth of a ton) of VOC.

7:27-30.3 General provisions

- (a) A DER credit represents a tradeable quantity of emission reductions, recognized pursuant to this subchapter. A credit does not constitute or convey a property right. Nothing in this

subchapter shall be construed to limit the authority of the State of New Jersey or the United States to terminate or limit DER credit(s).

- (b) A person may generate, transfer or voluntarily retire DER credits in accordance with this subchapter, without prior Federal, State or local government approval. A person may also use VOC or NO_x credits without such prior approval, except when the credits are to be used pursuant to N.J.A.C. 7:27-30.14(g) to comply with emission offset requirements under N.J.A.C. 7:27-18.
- (c) Only a whole number of DER credits may be generated, verified, transferred, voluntarily retired, used, found invalid, or cancelled.

7:27-30.4 DER credit generation: general requirements

- (a) A person may generate one or more DER credits pursuant to this section. However, no person may generate one or more credits unless the person:
 - 1. Implements a ***generation*** strategy which reduces the actual emissions of a generator source or group of generator sources below its baseline emissions;
 - 2. Conforms to all applicable provisions of this subchapter, including, but not limited to, the requirement that a DER credit be based on emission reductions that are real, surplus, and properly quantified; and
 - 3. Is authorized under (b) below to be the generator of the credits.
- (b) The generator of a DER credit shall be the owner or operator of the generator source, except as provided in (c) below, and except in the following circumstances:
 - 1. The generator source is a fuel, and the generation strategy is the reformulation of the fuel so as to decrease emissions from the fuel as it is distributed, stored, and/or sold for use in New Jersey. In such case, the person who implements the reformulation (that is, the owner or operator of the refinery or, if applicable, a person who is defined pursuant to N.J.A.C. 7:27-25.1 as a blender) is authorized to be the generator;
 - 2. The generator source(s) are mobile sources or nonroad sources operated in New Jersey, and the generation strategy is:
 - i. The reduction in the sources' activity levels through implementation of an activity reduction plan approved by the EPA or a State agency (such as an employee commute option plan approved by the State Department of Transportation under N.J.A.C. 16:50). In such case, the person who obtains approval of and implements the plan is authorized to be the generator;

- ii. The replacement of conventional vehicles in a fleet with lower- emitting vehicles or the modification of fleet vehicles to make them lower- emitting. In such case, the owner of the fleet is authorized to be the generator; and
 - iii. The testing (or more frequent testing) and repair of motor vehicles. In such case, the person who conducts the test and repair program is authorized to be the generator;
 - 3. The generator sources are consumer or commercial products (such as architectural coatings) which release emissions during their distribution, storage, or use, and the generation strategy is the reformulation or redesign of the products so that less emissions are released during the product's distribution, storage or use in New Jersey. In such case, the person who produces the reformulated or redesigned product (that is, the product manufacturer) is authorized to be the generator;
 - 4. The generator sources are electric generating units located in New Jersey, and the generation strategy is the reduction in the electric generating units' activity level by implementing electrical energy efficiency measures in a residential, commercial, industrial, institutional, or governmental facility that is located in New Jersey. In such case, the person who is the electricity consumer (that is, the owner or operator of the facility) is authorized to be the generator; or
 - 5. The generator source is the production of virgin materials (including, but not limited to, their extraction, harvesting, or manufacture, and their handling and transport) that are sold for use as a consumer or commercial product in New Jersey, or that are used as a raw material in a manufacturing process in New Jersey; and the generation strategy is the substitution of recycled materials for the virgin materials. In such case, the person who produces the recycled material in a form in which it is used (either as a product or as a raw material) as a substitute for virgin material is authorized to be the generator. For example, for recycled plastics, the post-consumer or post-industrial processor who produces recycled polymers in the form (pellets or flakes) that they are used by a plastics product manufacturer is authorized to be the generator.
- (c) If the person authorized to generate credits under (b) above enters a collective agreement under which the generation strategy would be implemented by another person authorized by the agreement to act on behalf of all signatories to the agreement, then the right to generate credits based on that strategy transfers to the other person, and the individual signatories are preempted from being generators.
 - (d) If the *[emission reduction]* **generation*** strategy entails a change in equipment or control apparatus and that change is subject to permit requirements under N.J.A.C. 7:27-8 or 22, the **following applies:**

1. A* permittee shall obtain the new permit or the modification or revision of the existing permit prior to commencing implementation of the *[emission reduction]* ***generation*** strategy **;** or
 2. **If the “at-risk” provisions of N.J.S.A. 26:2C-9.3 and 4 and/or N.J.A.C. 7:27-8.25(a) apply, a permit applicant may commence implementation of the generation strategy while the review of the permit application is pending. However, if the Department does not approve the generation strategy as set forth in the permit application, the emissions reductions realized during the “at-risk” period may not be used as a basis for DER credit generation*.**
- (e) DER credits shall be based only on discrete emission reductions that are real and surplus, and are quantified in accordance with N.J.A.C. 7:27-30.5, 30.24, and 30.25.
 - (f) If DER credits are to be based on reductions in emissions of a compound which may be classified as either a VOC or a GHG, then a generator may generate either VOC credits or GHG credits, but not both.
 - (g) The generation period for any batch of DERs shall not exceed one year. However, if a single generation strategy continues year after year to realize reductions, a generator may each year generate DER credits based on the strategy, provided that the generator meets the notice requirements set forth at N.J.A.C. 7:27-30.7 for each successive generation period.

7:27-30.5 DER credit generation: computation of credits

- (a) A generator shall calculate the quantity of DER credits generated in accordance with this section and a quantification protocol that satisfies the requirements of N.J.A.C. 7:27-30.24 and 30.25.
- (b) The number of DER credits generated shall be determined by calculating the quantity of discrete emission reductions on which credits may be based in accordance with (c) below; and then converting this quantity to a number of credits in accordance with ***(j)*** ***(i)*** below.
- (c) The quantity of discrete emission reductions on which credits may be based shall be calculated in accordance with the following formula:

$$ER = (\text{Baseline Emissions}) - (\text{Actual Emissions})$$
 where:

$$ER = \text{the quantity of discrete emission reductions generated during the generation period, given in units of weight (for example, pounds or tons);}$$

$$\text{Baseline Emissions} = \text{the quantity of emissions which the generator source would have emitted during the generation period if the generator had not implemented the } \mathbf{\textit{*generation*}}$$
 strategy to reduce the emissions. If the generator source is a facility, or is equipment, control apparatus, manufacturing process or other operation located at a facility, this quantity shall be determined in accordance with (d) below, except when the generator

is generating credits over multiple consecutive years. In such case, for the second year, and each year thereafter, baseline emissions shall be determined in accordance with *[(h)]* ***(g)*** below; and

Actual Emissions = the quantity of emissions that the generator source actually emitted during the generation period.

- (d) If the generator source is a facility, or is equipment, control apparatus, manufacturing process or other operation located at a facility, ***the source's baseline emissions shall equal the amount of the source's adjusted historic emissions, unless the source's allowable emissions and/or the source's measured emissions can be determined and unless either or both of these amounts of emissions are less than the source's adjusted historic emissions. In such case,*** the source's baseline emissions shall be the lowest of the following: the source's allowable emissions ***(if determined)***, the source's adjusted historic emissions, ***[or]* *and*** the source's measured emissions ***(if determined)***. Each of these shall be determined as follows:

1. The ***source's allowable emissions cannot be determined if no emissions limit established by federal or State law, rule, or regulation or by order applies to the source. However if such a limit applies, the*** source's allowable emissions, shall be determined using the source's actual activity level and actual hours of operation during the generation period and the lowest allowable emission rate which applies to the generator source during the generation period, minus a design margin. In determining the lowest allowable emission rate, the following shall be taken into consideration if applicable:
 - i. If the Department has approved a higher emission rate as an alternative emission limit for the source pursuant to N.J.A.C. 7:27-16 or 19, the rate which would have applied in the absence of the alternative emission limit (and not the alternative emission limit) shall be taken into consideration in determining the lowest allowable emission rate which applies to the source; and
 - ii. If a new permit or operating certificate, or a revision or modification of an existing permit or operating certificate, is required under N.J.A.C. 7:27-8 or 22 for the ***[emission reduction]* *generation*** strategy, the permit or operating certificate limit which shall be taken into consideration in determining the lowest allowable emission rate which applies to the source is:
 - (1) If the new permit or operating certificate, or a revision or modification of an existing permit or operating certificate, was issued by the Department prior to ***[(the date which is the operative date of these amendments)]* *June 6, 2000***, the new limit; and
 - (2) If the new permit or operating certificate, or a revision or modification of an existing permit or operating certificate, was issued

by the Department on or after *[(the date which is the operative date of these amendments)]* ***June 6, 2000***, the limit which applied prior to the issuance of the new or revised permit or operating certificate (and not the new limit);

2. The source's adjusted historic emissions shall be its historic emissions adjusted for any difference between the source's economic output during the historic baseline period and during the generation period. A source's adjusted historic emissions shall be determined in accordance with the following formula:

$$\text{Adjusted Historic Emissions} = \left(\frac{\text{EO}_G}{\text{EO}_H} \right) (\text{Historic Emissions})$$

where:

Adjusted Historic Emissions	=	The source's historic emissions, adjusted for any difference between the source's economic output during the historic baseline period and during the generation period;
_____ EO_G	=	The economic output of the generator source during the generation period;
_____ EO_H	=	The generator source's historic economic output determined in accordance with (e) below, expressed in the same units as is used for economic output during the generation period; and
_____ Historic Emissions	=	The emissions calculated in accordance with (e) below; or

3. The ***source's measured emissions cannot be determined if it is not technically feasible to measure the emission stream upstream of the point of application of the generation strategy. However if such measurements can be taken, the*** source's measured emissions shall be determined using the source's actual activity level and actual hours of operation during the generation period and the emission rate which would have resulted had the generation strategy not been applied, determined from measurements made upstream of the point of application of the generation strategy. If the strategy entails the replacement of a control apparatus, subtract the emission reductions that would have been realized by the replaced control from the total emissions calculated. *[If it is not technically feasible to take the upstream measurements, this approach shall not be considered in determining the source's baseline emissions.]*

- (e) A generator source's historic emissions shall be calculated using the source's historic emission rate, historic activity level, and historic hours of operation. These terms, as well as the source's historic economic output, shall be derived as follows:

*[1. Determine the source's historic baseline period. This period shall be based on one or more intervals subsequent to January 1, 1990, selected as follows:

- i. If the source has operated for five years or more since January 1, 1990:
 - (1) Identify, in accordance with (f) below, the time interval which corresponds to the generation period in each of the five years immediately preceding a date selected pursuant to (g) below;
 - (2) Determine for each of the five intervals the source's emissions per unit of economic output;
 - (3) Disregard the interval that has the highest emissions per unit of economic output and the interval that has the lowest emissions per unit of economic output; the three remaining intervals shall be the historic baseline period;
- ii. If the source has operated for four years since January 1, 1990, determine in accordance with (f) below the time interval in each of the three most recent years which corresponds to the baseline period. The historic baseline period shall be these three intervals; and
- iii. If the source has operated for one to three years since January 1, 1990, determine in accordance with (h) below the time interval in each of these years which corresponds to the baseline period. The historic baseline period shall be these intervals;]*

***1. Determine the source's historic baseline period, as follows:**

i. If the source has operated for less than two years since January 1, 1990, the source's historic baseline period shall be the interval which corresponds to the generation period in the year immediately preceding the first day of the generation period; and

ii. If the source has operated for two or more years since January 1, 1990, the source's historic baseline period shall be one of the following:

(1) The two intervals which correspond to the generation period in each of the two years immediately preceding the first day of the generation period, unless the generator is generating "early" credits pursuant to N.J.A.C. 7:27-30.6(b)3 or (d). In such case, the source's historic baseline period shall be the two intervals

which correspond to the generation period in each of the two years immediately preceding the date the generation strategy was first implemented; or

(2) If the generator demonstrates that any two intervals which correspond to the generation period within the five years preceding the first day of the generation period (or, for "early" credit generation, preceding the date the generation strategy was first implemented) are more representative of normal operations, these two other intervals;*

2. Using the historic baseline period determined under (e)1 above, determine the value of the terms, as follows:
 - i. The source's historic emission rate shall be its average emission rate during the historic baseline period;
 - ii. The source's historic activity level shall be its average activity during the historic baseline period;
 - iii. The source's historic hours of operation shall be its average hours of operation per interval during the historic baseline period. Therefore, if the historic baseline period includes *[three]* ***two*** intervals, the source's historic hours of operation would be its total hours of operation during the historic baseline period divided by *[three]* ***two***; and
 - iv. The source's historic economic output shall be its average economic output per interval during the historic baseline period. Therefore, if the historic baseline period includes two intervals, the source's historic economic output would be its total economic output during the historic baseline period divided by two.
- (f) A time period shall be considered to be an interval that corresponds to a given generation period if the period begins in a different year but on the same calendar date (for example, April 15) as the generation period, and has the same duration as the generation period.
- *[(g) In determining a historic baseline period, a generator shall consider the year(s) prior to a date selected as follows:
 1. If, pursuant to N.J.A.C. 7:27-30.6(b)4, the generator is generating "early" VOC or NO_x credits based on emission reductions that occurred between May 1, 1992, and August 2, 1996, the date shall be the day the strategy was first implemented;
 2. If pursuant to N.J.A.C. 7:27-30.6(c) the generator is generating "early" GHG credits based on GHG emission-reducing strategies that were first implemented between

January 1, 1991 and (the date which is the operative date of these amendments), the date shall be the day the strategy was first implemented; or

3. Otherwise, the date shall be the first day of the generation period.]*

[(h)] ***(g)*** A generator who generates DER credits pursuant to N.J.A.C. 7:27- 30.4(g), based on emission reductions realized over multiple years from implementation of a single generation strategy, may in the calculation of baseline emissions for the second year of DER credit generation, and each year thereafter, use the same *[value]* ***values*** for "historic emissions" ***and "historic economic output"*** as *[was]* ***were*** used in the first year, provided that:

1. The generator generates credits for each successive consecutive generation period;
2. This continuous generation is reflected in the generator's annual submission of a Notice of Generation;
3. Each year's generation period corresponds to the initial generation period, as determined pursuant to (f) above; *[and]*

4. No new applicable maximum allowable emission rate that is lower than the historic emission rate is promulgated by EPA or the Department. If such a rate is promulgated, then the value for "historic emissions" shall be recalculated using the newly applicable maximum allowable emission rate, minus a design margin; and

[4.] ***5.*** If the generator discontinues DER credit generation, and later decides to resume credit generation based on the initial generation strategy, *[baseline emissions are]* ***"historic emissions" and "historic economic output" shall be*** recalculated pursuant to (d) above, using information from the years immediately preceding the new generation period.

[(i)] ***(h)*** The quantity of emission reductions calculated under (c) above shall be discounted in accordance with the following, as applicable:

1. If the generation strategy results in increases of actual emissions of that air contaminant from one or more emissions sources other than the generator source, located at the facility or offsite, the quantity of emission reductions shall be reduced by the amount of those emission increases, as follows:
 - i. For each resulting pound of VOC increases (if VOC credits are being generated) or NO_x increases (if NO_x credits are being generated), a pound shall be subtracted; and
 - ii. For GHG, for each resulting pound of increased emissions of carbon equivalent, a pound of carbon equivalent shall be subtracted;

2. If the generator source's actual emissions or actual emission rate for any air contaminant during any part of the generation period exceeded any applicable limit established in its permit (unless the exceedance is authorized pursuant to the permit insurance provisions at N.J.A.C. 7:27-30.14(d) and (e))* or under applicable Federal or State law or rules, the quantity of emission reductions shall be reduced to reflect that no emission reduction, generated during that part of the generation period, may be used as the basis for a credit;
3. For VOC and NO_x, if ***a portion of*** the emission reductions calculated under (c) above have been relied on ***[to any degree]*** in the SIP ***and are therefore not surplus***, ***[the quantity of the]*** ***this portion shall be subtracted from the amount of*** emission reductions ***[shall be reduced to that extent]*** ***that was calculated***; ***[and]***
4. If the emission reductions are reductions that were banked pursuant to N.J.A.C. 7:27-18.8 and that are being converted to DER credits, the quantity of the emission reductions shall be reduced pursuant to N.J.A.C. 7:27-18.8(e) if the generator source is subject to a new emission limit established under a State or Federal statute, rule, or regulation ***; and**
- **5. If any amount of the emission reductions calculated under (c) above occurred at a generator source that is not located in New Jersey, the quantity of the emission reductions shall be reduced by that amount*.**

***[(j)]* *(i)* The number of DER credits generated shall be determined by converting the quantity of emission reductions calculated under (c) above, expressed in pounds, and as discounted pursuant to *[(i)]* *(h)* above (if applicable), into the number of DER credits generated in accordance with the following:**

1. For VOC or NO_x, divide the quantity of emission reductions (given in pounds) by 100 pounds;
2. For a greenhouse gas, divide the quantity of emission reductions (given in pounds of carbon equivalent calculated pursuant to ***[(k)]* *(j)* below**) by 2,205 pounds;
3. If the registry will receive a complete Notice of Generation late, the number calculated pursuant to ***[(j)1]* *(i)1* or 2** above shall be reduced for such lateness in accordance with N.J.A.C. 7:27-30.7(b); and
4. If the result obtained is a whole number, that is the number of DER credits generated; otherwise the result shall be rounded down to the next lowest whole number to determine the number of DER credits generated.

***[(k)]* *(j)* A quantity of any greenhouse gas, given in pounds, may be converted to a pound of carbon equivalent using the following formula:**

$$CE = 0.2727 \times (GHG) \times (GWP)$$

where:

CE = A quantity of carbon equivalent, expressed in pounds;
 0.2727 = The ratio of the molecular weight of carbon to that of carbon dioxide;
 GHG = A given quantity of a specific greenhouse gas, expressed in pounds; and
 GWP = The global warming potential of the specific greenhouse gas, as listed in Appendix ~~*(B)*~~ *A*.

~~*(l)*~~ *(k)* For VOC and NO_x, if part of the generation period falls within the ozone season and part outside the ozone season, a generator shall perform the calculations in (c), ~~*(i)*~~ *(h)* and ~~*(j)*~~ *(i)* above separately for those emission reductions generated during the ozone season and for those emission reductions generated outside the ozone season. The total number of credits generated shall be the sum of the credits generated during the ozone season and the credits generated outside the ozone season.

7:27-30.6 DER credit generation: limitations

(a) None of the following emission reductions is a basis for generation of a DER credit:

1.-2. (No change.)

3. An emission reduction that is required to comply with a requirement in the Federal Clean Air Act, the New Jersey Air Pollution Control Act (N.J.S.A. 26:2C-1 et seq.), any regulation, permit, operating certificate, or order pursuant thereto; any air quality emission limit or standard in any applicable law, regulation, permit, or order; or any SIP or Federal Implementation Plan except:

i. If emissions are reduced below the level required to comply, they may be used as the basis for generation of a DER credit; and

ii. As provided in the procedures for calculating baseline emissions at N.J.A.C. 7:27-30.5(d)1ii.

4. An emission reduction which has been used under any other emissions trading program as the basis for a credit under ~~*[any other emissions]*~~ *that other* trading program. For example, an emission reduction which has been used as the basis for a claim for early reduction credit in the NO_x Budget Program pursuant to N.J.A.C. 7:27-31.12 may not also be used as a basis for generation of a DER credit. However, this prohibition does not include emission reductions banked under the provisions of the emission offset rule at N.J.A.C. 7:27-18.8 or a NO_x Budget Program allowance which is being converted to a DER credit pursuant to N.J.A.C. 7:27-30.27;

5. An emission reduction which has previously been used as the basis for generating a DER credit under this subchapter;

6. An emission reduction which is accompanied by an increase in a source's emissions of a HAP from a level below the applicable *[emission threshold]* ***SOTA Threshold*** set forth in Table *[C]* ***A*** or Table *[D]* ***B*** at N.J.A.C. 7:27-8, Appendix *[I]* ***1***, to a level above the threshold;
 7. An emission reduction which is accompanied by an increase in emissions of any HAP (from the emissions source or from any other source at the facility or off-site) ***from a level*** which exceeds ***the applicable SOTA Threshold set forth in Table A or Table B at N.J.A.C. 7:27-8, Appendix 1, to a higher level. This SOTA Threshold level is*** the de minimis level designated for that HAP by the EPA pursuant to 42 U.S.C. § 7412(g). The de minimis levels are as currently set forth in a proposed rule at 59 F.R. 15504 (April 1, 1994). If the EPA adopts a final rule or publishes a new proposed rule to designate the de minimis levels, the Department will revise this paragraph through an administrative correction pursuant to N.J.A.C. 1:30-2.7;
 8. An emission reduction which is accompanied by a violation of a Federal or State law, regulation, order or permit. For example, if the generator source's actual emissions or actual emission rate for any air contaminant during any portion of the generation period exceeds any applicable limit established in the generator source's permit authorizes for such portion of the generation period, no DER credits shall have been generated during that portion of the generation period;
 9. An emission reduction that results from the implementation of a regionally significant highway project or a regionally significant transit project as defined in 40 CFR 93.101;
 10. An emission reduction that is not a consequence of an action taken by the generator, including, but not limited to, reductions resulting from chance events *[such as changes in the weather]*;
 11. An emission reduction from a generator source that is not located in New Jersey; *[or]*
 12. An emission reduction from a new *[emission]* ***emissions*** source which has operated for less than one year prior to the first day of the generation period; or
 - *13. An emission reduction*** from a new product which has been distributed, stored, or sold for use in New Jersey for less than one year prior to the first day of the generation period.
- (b) None of the following emission reductions is a basis for generation of a VOC or NO_x credit:
1. An emission reduction below an alternative emission limit approved by the Department for the generator source(s) pursuant to the alternative control plan provisions at N.J.A.C. 7:27-16.17(a)2, the facility-specific NO_x emission limit

provisions at N.J.A.C. 7:27-19.13(a)2, or the emission averaging provisions at N.J.A.C. 7:27-19.6, except to the extent that the emissions are reduced below the limit that would otherwise apply;

2. An emission reduction from a stationary source that is subject to N.J.A.C. 7:27-16 or 19, but for which the Department has not yet established an applicable RACT limit either in the rule or in a source- specific emissions limit submitted to the EPA as a SIP revision;
3. An emission reduction generated before May 1, 1992. Furthermore, an emission reduction generated at any time between May 1, 1992 and August 2, 1996 may be a basis for generation of a DER credit only if it satisfies the applicable requirements of this subchapter, and one of the following occurred on or before October 31, 1996:
 - i. The Department informed the generator in writing that the emission reduction is real, surplus, and properly quantified; or
 - ii. The generator submitted to the Department and the registry a Notice of Generation in accordance with N.J.A.C. 7:27-30.7 for the emission reduction; or
4. An emission reduction from a generator source whose emissions are not reflected in the emissions inventory submitted by the State to the EPA for inclusion in the SIP, or in the annual *[major point source emission]* ***emissions*** inventory conducted pursuant to ***the emission statement program rules at*** N.J.A.C. 7:27-21. *[Appendix A lists the emissions included in the emissions inventory as of August 2, 1996.]*

(c) ***None of the following emission reductions is a basis for generation of a GHG credit:**

1. Reducing the amount of a hydroflourocarbon (HFC) or a perflourocarbon (PFC) that is used in a fire suppression system; and

2. Reserved.*

***[(c)]* (d) A GHG emission-reducing strategy that was implemented after 1990 but prior to June 6, 2000 may be used as a generation strategy, subject to the following constraints and limitations:**

1.* An emission reduction generated prior to *[(the date which is the operative date of these amendments)]* ***June 6, 2000*** may not be used as the basis for generation of a GHG credit *. For GHG emission-reducing strategies that were first implemented after 1990 but prior to (the date which is the operative date of these amendments)]* ***; however***, GHG credits may be based on the emission reductions realized from these strategies on and after *[(the date which is the operative date of these amendments), provided that the Notices]* ***June 6, 2000; and**

- 2. The Notice*** of Generation for the first generation period *[and each additional generation period up to the current year is]* **shall be*** submitted no later than *[(the date which is one year plus 90 days after the operative date of these amendments)]* **September 4, 2001 and shall be for a generation period which commences on June 6, 2000***.

[(d)] **(e)*** A DER credit shall not be based on the reduction of a facility's fugitive emissions unless:

1. The facility is subject to a facility-wide permit issued under N.J.S.A. 13:1D-48; and
2. The fugitive emissions are reduced by the owner or operator taking pollution prevention measures.

[(e)] **(f)*** If the *[emission reduction]* **generation*** strategy is the replacement of an existing *[emission]* **emissions*** source with a lower-emitting source, notwithstanding the provisions of N.J.A.C. 7:27-30.4(g) which provide for continuing generation of DER credits year after year from a single *[emission reduction]* **generation*** strategy, no DER credit shall be based on the reductions realized by the replacement source after the end of the useful life of the replaced source.

7:27-30.7 DER credit generation: Notice of Generation

- (a) *[A]* **On and after June 6, 2000, a** generator shall submit a Notice of Generation in accordance with this section, the general notice requirements at N.J.A.C. 7:27-30.18, and the requirements for submission of notices at N.J.A.C. 7:27-30.19. **A Notice of Generation submitted prior to June 6, 2000 shall conform with the applicable requirements promulgated on August 5, 1996, at 28 N.J.R. 3786(b).***
- (b) The deadline for timely submittal of a complete Notice of Generation is 90 days after the last day of the generation period. A Notice of Generation that is received by the registry after this deadline is late, and the following shall apply:
1. Within the notice the generator shall initially reduce the quantity of credits claimed in the notice by 10 percent for the lateness, and shall further reduce the number of credits claimed by an additional 10 percent of the original quantity claimed for each full increment of 30 days beyond the deadline that the notice is submitted. For example, if a generator could have claimed 100 credits, but submits the notice 40 days late, the generator shall claim only 80 credits; and
 2. A Notice of Generation shall not be submitted later than 270 days after the deadline.
- (c) Emission reductions from more than one generator source may be grouped together and submitted as a batch in single Notice of Generation only if:

1. The generator sources are:
 - i. All stationary sources subject to an averaging plan approved by the Department pursuant to N.J.A.C. 7:27-19.6; or
 - ii. A group of more than one stationary source of the same type located at a single facility and the same generation strategy is used for each;
 2. The reductions are the fugitive emission reductions at a facility subject to a facility-wide permit issued pursuant to N.J.S.A. 13:1D-48 which result from pollution prevention measures;
 3. The reductions are generated through the implementation of any of the generation strategies listed at N.J.A.C. 7:27-30.4(b)2 through 5, and the reductions are realized from the implementation of a single generation strategy; or
 4. The generator is an agent authorized under N.J.A.C. 7:27-30.4(c) to implement one or more emission reduction strategies for *[emission]* ***emissions*** sources owned or operated by the signatories to the agreement, and the emission reductions are the reductions realized from the implementation of a single generation strategy at facilities under the control of the signatories.
- (d) A Notice of Generation shall include the following:
1. The name and address of the generator, the generator's type of business (for example, electric utility or architectural coating manufacturer), and other pertinent identifying information including the name and telephone number of a contact person;
 2. If the generator is an agent authorized to act on behalf of all signatories to a multi-party agreement, and authorized pursuant N.J.A.C. 7:27-30.4(c) (in lieu of the signatories) to be the generator of DER credits, a copy of the collective agreement and a list of all signatories to the agreement, together with the identifying information required under (d)1 above for each signatory;
 3. A description of the generation strategy employed;
 4. For the generator source(s), the identifying information specified at N.J.A.C. 7:27-30.18(d), except in the cases given in (d)4i and ii below. In these cases only a general class (and not specific generator source(s)) shall be identified, and the additional requirements set forth in (d)4i and ii below shall be satisfied:
 - i. If the generation strategy is the implementation of energy efficiency measures, in lieu of identifying the specific generator source(s), the address and county of the facilities where the measures were implemented; and

- ii. If the generation strategy is the substitution of recycled materials for virgin materials that would otherwise be sold for use as a consumer or commercial product or as a raw material in a manufacturing process, in lieu of identifying the specific production process for the virgin materials, the generator shall provide documentation that the recycled materials were sold for use as a consumer or commercial product in New Jersey, or were conveyed to a manufacturer in New Jersey for use as a raw material in the manufacturer's production process;
5. The month, day, and year of the first and last dates of the generation period;
6. A demonstration that the person submitting the notice is the person authorized under N.J.A.C. 7:27-30.4(b) to be the generator of the credits;
7. One of the following:
 - i. If a quantification protocol approved by EPA or the Department is used to calculate the number of DER credits generated, citation of that protocol; or
 - ii. The quantification protocol used, and a statement that the protocol meets the requirements for protocols at N.J.A.C. 7:27-30.25;
8. The type of DER credits being generated (for example, VOC credits or NO_x credits);
9. The number of each type of DER credits determined, pursuant to N.J.A.C. 7:27-30.5 and the quantification protocol, to have been generated; for VOC and NO_x credits, the number based on reductions during the ozone season and for the rest of the year shall be given separately;
10. If the generation of the DER credits resulted in an increase, de minimis or otherwise, in the actual emissions of any HAP, either at the facility or off-site, the name of the HAP specie(s) that had increased emissions and the amount of the increase, together with specification as to whether the increase was from the generator source, from other source(s) at the facility, and/or from source(s) off-site;
11. For GHG credits, a statement specifying whether or not the emission reductions on which the credits are based have also been reported to Energy Information Administration in the United States Department of Energy under its program for Voluntary Reporting of Greenhouse Gases under Section 1605(b) of the Energy Policy Act of 1992 (42 U.S.C. § 13385);
12. A demonstration that the emission reductions on which the DER credits are based are surplus. ***If the generation strategy is a highway project or a transit project,*** ***[This] *this demonstration*** shall include a showing that the emission reductions are not a result of the implementation of a regionally significant highway project or a regionally significant transit project as defined in 40 CFR 93.101;

13. For NO_x credits that are based on retired allowances allocated under the NO_x Budget Program, **[a]** **the following:**

i. **A** copy of the Allowance Transfer Form that the Authorized Account Representative has submitted to the NO_x Allowance Tracking System Administrator indicating that the allowances are transferred to a retirement account, as required at N.J.A.C. 7:27-31.6(a)2; **and**

ii. **If the retired allowances had been allocated to the owner or operator of a budget source, a demonstration that the budget source had NO_x emission reductions which were equal to or greater than the emissions value of the retired allowance(s); that the reductions qualify to be used as the basis for a DER credit under N.J.A.C. 7:27-30.4, 30.5, 30.6, and 31.6; and the reductions occurred both within the NO_x Budget control period and within the generation period;***

14. If the value used for "historic emissions" in the calculation of baseline emissions is the value used in an initial generation period pursuant to N.J.A.C. 7:27-30.5*(h)* **(g)**, the date the generation strategy was first implemented;

15. If the **[emission reduction]** **generation** strategy is the replacement of an existing **[emission]** **emissions** source with a lower-emitting **emissions** source, the date **that** the **[replaced]** equipment or control apparatus **which was replaced** commenced operating and **the** date of the end of the useful life of the **[replaced]** equipment or control apparatus **which was replaced**; **[and the method used to determine the source's useful life;]***

16. All supporting documentation required to be submitted with the **[notice]** **Notice of Generation** pursuant to the quantification protocol, which at a minimum must conform with N.J.A.C. 7:27-30.25;

17. The following statements:

- i. The emission reductions on which the DER credits are based are real;
- ii. The DER credits were not based on a type of emission reduction which may not, pursuant to N.J.A.C. 7:27-30.6, be used as the basis for a DER credit, or on actions prohibited under this subchapter or other provisions of law;
- iii. All calculations relied on in the notice have been performed in accordance with N.J.A.C. 7:27-30.5 (as applicable) and with a quantification protocol that meets the requirements of N.J.A.C. 7:27-30.24 and **[25]** **30.25**; and
- iv. All supporting documentation required to be submitted with the notice by the approved quantification protocol or under N.J.A.C. 7:27-30.25 is enclosed;

18. If, pursuant to N.J.A.C. 7:27-30.27, the DER credits included in the notice were generated through the conversion of emission reductions banked under the provisions of the emission offset rule at N.J.A.C. 7:27-18.8, or through the conversion of allowances allocated under the provisions of the NO_x Budget Program at N.J.A.C. 7:27-31.7, a statement indicating this;
 19. For any batch of DER credits based on emission reductions due to the implementation of an energy efficiency measure, a statement as to whether or not the implementation was subsidized in whole or in part by funding derived from the societal benefits charge levied pursuant to Section 12 of Electric Discount and Energy Competition Act at N.J.S.A. 48:3-60;
 20. ***If any amount of the emission reductions calculated under N.J.A.C. 7:27-30.5(c) occurred at a generator source that is not located in New Jersey, this quantity of the out-of-state emission reductions, given in tons, may (at the option of the generator) be recorded in the notice;**
 - 21.*** Any other information required pursuant to N.J.A.C. 7:27-30.18(c); and
- *[21.]* *22.*** The certification by the generator as required at N.J.A.C. 7:27-30.18(e).

7:27-30.8 Registry

- (a) This section sets forth the procedures and standards for the banking of DER credits in a registry.
- (b) Any submittal of a notice or a request to the registry that is required or allowed under this subchapter shall be made to the following address:
OMET Registry Operator
Mosakin International Corporation
1075 Easton Avenue
Tower 3, Suite 4
Somerset, New Jersey 08873
Attn: Emissions Trading Registry
- (c) The registry includes information from the following notices (and from amendments thereto):
 1. Notices of Generation;
 2. Notices of Transfer;
 3. Notices of Verification;
 4. Notices of Intent to Use;

5. Notices of Use;
 6. Notices of Credit Invalidation from the Department or the EPA pursuant to N.J.A.C. 7:27-30.29; and
 7. Notices of Retirement pursuant to N.J.A.C. 7:27-30.11.
- (d) A person has not satisfied a requirement to submit a notice to the registry until the date on which the registry receives a complete notice which includes all items required under this subchapter. If the notice is sent by certified mail or by another method which provides a receipt showing the date of delivery, the date shown on the receipt is the date on which the registry shall be deemed to have received the notice. Otherwise, the date which the registry's records show as the date of receipt shall control.
- (e) The operator of the registry shall process each notice or amendment it receives as follows:
1. Within one business day after receiving a notice or amendment thereto, the operator of the registry shall determine whether the notice or amendment contains all items required under this subchapter;
 2. If the notice or amendment contains all required items, then within one additional business day the operator of the registry shall update the registry to include the notice or amendment and perform the following, as applicable:
 - i. If the notice is a Notice of Generation, the operator of the registry shall assign a unique serial number to each DER credit claimed in the notice and note all such serial numbers on the registry's copy of the notice;
 - ii. If the notice is a Notice of Verification, the operator of the registry shall designate each credit in the batch as verified or not verified pursuant ***to*** N.J.A.C. ***[7:27-30.29]*** ***7:27-30.10(e)***;
 - iii. If the notice is an amendment of a Notice of Generation which reduces the number of credits originally claimed for the batch, the operator of the registry shall designate the withdrawn credits as canceled in accordance with N.J.A.C. 7:27-30.29;
 - iv. If the notice is an amendment of a Notice of Generation which renders prior Notice(s) of Verification invalid pursuant to N.J.A.C. 7:27- 30.10(f), the operator of the registry shall remove from the registry all designations, based on the Notice(s) of Verification, that credits are verified or not verified. The Notice(s) of Verification shall remain in the registry, but the operator of the registry shall label it invalid; and
 - v. If the notice is a Notice of Invalidation submitted by the Department or EPA pursuant to N.J.A.C. 7:27-30.29(a), the operator of the registry shall, for each

affected credit, place a designation in the registry that the credit is invalid;
and

3. If the notice or amendment is missing a required item, the operator of the registry shall return the notice to the person who submitted it, together with an explanation of why the notice is incomplete, and shall not update the registry to include the notice or amendment.
- (f) The operator of the registry shall post in the registry a copy of each complete Notice of Generation, Notice of Intent to Use, or Notice of Use, and each amendment thereof, submitted electronically pursuant to N.J.A.C. 7:27-30.19(b), so that the notice or amendment may be examined and/or downloaded by any interested person.
 - (g) If, pursuant to N.J.A.C. 7:27-30.10(h), the Department or the EPA finds a verification defective, ***the operator of the registry shall label the corresponding Notice of Verification as invalid. If the invalid Notice of Verification is the only Notice of Verification in the registry that applies to a given batch of DER credits,*** the operator of the registry shall remove from the registry all designations that the credits in the batch are verified or not verified. ***If the invalid Notice of Verification is not the only Notice of Verification in the registry that applies to a given batch of DER credits, the operator of the registry shall designate all the credits in the batch as verified or not verified based on the Notices of Verification that are not labeled as invalid.***
 - (h) If a credit has been used, and if the operator of the registry takes either of the following actions which affects the status of the credit, the registry operator shall within seven days of taking the action provide notification, on paper, to the user and to the Department which identifies the credit by its serial number, states the action taken, and gives the basis for the action:
 1. Cancellation of the credit pursuant to (e)2iii above; or
 2. Removal of the designation of a credit's verification pursuant to (e)2iv above.

7:27-30.9 DER credit transfer

- (a) In order to effect the transfer of one or more DER credits from one holder to another, the ***[transferor] *transferee*** shall submit a Notice of Transfer to the registry in accordance with this section, the general notice requirements at N.J.A.C. 7:27-30.18, and the requirements for submission of notices at N.J.A.C. 7:27-30.19.
- (b) The transferor shall provide a complete copy of the following to the transferee at the time of the transfer:

1. The Notice of Generation for each batch of DER credits of which the transferred credits are a part including any supporting documentation required pursuant to the quantification protocol or N.J.A.C. 7:27-30.25;
 2. The Notice(s) of Verification, if any, for each batch DER credits being transferred in full or in part; and
 3. Each amendment to these notices.
- (c) A Notice of Transfer shall include the following:
1. Information to identify the transferor and the transferee;
 2. The serial numbers assigned to each DER credit being transferred;
 3. The average per-credit purchase price ***of DER credits generated during the ozone season*** paid by the transferee to the transferor ***and the average per-credit purchase price of DER credits generated outside the ozone season paid by the transferee to the transferor***. ***[This price] * *These prices*** shall be based on the full cost of the transaction, including, but not limited to, the amount paid for the credits and any associated service fees;
 4. A statement that the (named) transferor has provided the documents listed in (b) above to the (named) transferee; and
 5. Certification by both the transferor and transferee as required under N.J.A.C. 7:27-30.18(e).
- (d) No DER credit shall be transferred if the credit has been used or retired, or if it has been canceled or designated as invalid pursuant to N.J.A.C. 7:27-30.29.

7:27-30.10 DER credit verification

- (a) A DER credit to be used in New Jersey shall be considered to be verified only if:
1. The credit is in the set of NO_x credits verified by the Department on April 25, 1995;
 2. The credit is in a batch verified by one of the following persons:
 - i. A professional engineer licensed by the New Jersey Board of Professional Engineers and Land Surveyors pursuant to N.J.S.A. 45:8-27 et seq.; or
 - ii. A certified public accountant licensed by the New Jersey Board of Accountancy pursuant to N.J.S.A. 45:2B-1 et seq.; or

3. The credit has been verified by the air pollution control agency of another state or in accordance with the verification procedures of the other state, provided that:
 - i. The credit was generated in the other state; and
 - ii. The Department has entered into an interstate agreement with the air pollution control agency of the other state which expressly allows credit verifications performed under the auspices of the other state to be recognized in New Jersey.
- (b) *[A]* **Although a generator may engage a verifier to perform a verification, the*** verifier shall **otherwise*** be independent of the generator. A verifier shall not be considered independent if:
1. The verifier is employed by the generator, or was employed by the generator within the six months before the verification;
 2. The verifier is employed by an entity that prepared the Notice of Generation or any of its supporting documentation for the batch of DER credits being verified, assisted the generator in such preparation, or otherwise assisted the generator in connection with the generation of the batch of DER credits being verified;
 3. The generator is owned, in whole or part, or is subject to control *[or direction]*, by the verifier or the verifier's employer; or
 4. The employer of the verifier is owned, in whole or part, or is subject to control *[or direction]*, by the generator.
- (c) In performing a verification, a verifier shall consider all the DER credits included in the batch covered by a Notice of Generation. A verifier can verify a DER credit only if the verifier makes all of the following findings, based on diligent inquiry that is not limited to reliance upon representations made by the generator:
1. The Notice of Generation, together with any amendment thereto, includes all of the information, statements, supporting documentation, and certification required under this subchapter and the applicable quantification protocol;
 2. The Notice of Generation, together with any amendment thereto, and including all statements made therein and all the supporting documentation, *[is]* **appears on its face to be*** true, accurate and complete;
 3. The notice, together with any amendment thereto, documents that all calculations relied on in the notice were performed as required under N.J.A.C. 7:27-30.5 and a quantification protocol which meets the requirements of N.J.A.C. 7:27-30.24 and 30.25; and

4. The notice, together with any amendment thereto, establishes that the DER credits are based on emission reductions which are real and surplus, and which satisfy all other applicable requirements of this subchapter for the generation of DER credits.
- (d) After making a determination as to whether some or all of the DER credits in the batch can be verified, the verifier shall submit a complete Notice of Verification to the registry in accordance with this section, the general notice requirements at N.J.A.C. 7:27-30.18, and the requirements for submission of notices at N.J.A.C. 7:27-30.19.
- (e) A Notice of Verification shall include the following:
1. The name, address, and other pertinent identifying information for:
 - i. The verifier, including the number of the verifier's New Jersey professional engineer or certified public accountant license;
 - ii. The verifier's employer; and
 - iii. The person for whom the verifier is performing the verification;
 2. The serial number assigned to each DER credit in the batch;
 3. Specification of whether all the credits in the batch are verified, part of the ***credits in the*** batch is verified, or none of the batch is verified; if the verifier has determined that he or she is able to verify only part of the ***credits in the*** batch, specification of the number of credits verified, together with an explanation of why all the credits cannot be verified;
 4. The following statements:
 - i. A statement that the verifier has made each of the specific findings required under (c) above, based on the diligent inquiry required under (c) above; and
 - ii. A statement attesting that the verifier is, in accordance with ***[(d)]* *(b)*** above, independent of the generator;
 5. Disclosure of whether or not the verifier or the verifier's employer is a holder of any credits in the batch;
 - *[6.** A detailed description of any fiduciary relationship(s)(current, prospective, or which have existed in the previous five years) between the verifier, and also the verifier's employer, and the following:
 - i. The person for whom the verifier is performing the verification;
 - ii. The generator; and

iii. The holder of any credit in the batch;]* and

[7.] *6.*The certification by the verifier as required under N.J.A.C. 7:27- 30.18(e).

(f) A credit shall not be considered to be verified if the Notice of Verification that applies to the credit is no longer valid. No Notice of Verification is valid if, subsequent to the verifier's submission of the Notice of Verification to the registry, an amendment to the Notice of Generation is submitted to the registry which substantively changes any of the information on which the verification was based, including, but not limited to, changes to any of the following:

1. The number of DER credits which have been generated;
2. The method used to calculate the number of DER credits generated; or
3. The data or other information on which the calculation is based.

(g) Any person may have a batch of DER credits verified, even if the batch has already been verified. Therefore, the registry may reflect more than one Notice of Verification for a single batch of *[DERs]* *DER credits*.

(h) If the Department or the EPA determines that a verification is defective, the Department or the EPA will notify the operator of the registry, the verifier, and any person who has used a credit in the batch of its finding.

(i) Notwithstanding the provisions of this section, for any Notice of Generation submitted to the registry prior to June 6, 2000, a verifier shall meet the applicable requirements promulgated at N.J.A.C. 7:27-30.10 on August 5, 1996, at 28 N.J.R. 3786(b); and the verification shall be performed in accordance with the standards set forth in the rules promulgated on August 5, 1996, at 28 N.J.R. 3786(b).

7:27-30.11 Voluntary retirement of DER credits

(a) A holder of a DER credit may voluntarily retire that credit by submitting a Notice of Retirement to the registry in accordance with this section, the general notice requirements at N.J.A.C. 7:27-30.18, and the requirements for submission of notices at N.J.A.C. 7:27-30.19.

(b) A Notice of Retirement shall include the following:

1. Information to identify the holder who is retiring the credit(s);
2. The serial number assigned to each DER credit being voluntarily retired; and

3. The certification by the holder who is retiring the credits as required pursuant to N.J.A.C. 7:27-30.18(e).
- (c) DER credits which are being voluntarily retired under this section do not need to be verified prior to being retired.
- (d) A person who submits a Notice of Retirement may subsequently amend the notice pursuant to N.J.A.C. 7:27-30.20 to correct an error in the notice.
- (e) When DER credits are being used pursuant to N.J.A.C. 7:27-30.12, a Notice of Retirement shall not be submitted for the retirement of 10 percent of the credits being used (or, if the use is a "permit insurance" use pursuant to N.J.A.C. 7:27-30.14(d) and (e), 20 percent of the credits being used) for the benefit of the environment. Such retirement is an integral part of the use and is covered in the Notice of Use.
- (f) No person may transfer or use a DER credit that has been retired, and no person may withdraw a Notice of Retirement.

7:27-30.12 VOC and NO_x credit use: general requirements

- (a) A DER credit, based on reductions of VOC or NO_x emissions, may be used for compliance under this section.
- (b) A VOC or NO_x credit shall be considered a limited authorization to emit NO_x or VOC in accordance with the provisions of this subchapter, the Federal Clean Air Act, the New Jersey Air Pollution Control Act (N.J.S.A. 26:2C-1 et seq.) and rules promulgated thereunder. However, nothing in this subchapter shall be construed to limit the authority of the State of New Jersey or the United States to terminate or limit such authorization.
- (c) A user may use a credit for compliance only if the registry shows that the user holds the credit, that the DER credit is verified, that the credit has not been used previously or retired, that the credit *[that]* has not been cancelled pursuant to N.J.A.C. 7:27-30.29(b), and that the credit has not been found *[by]* to be invalid by either the Department or the EPA.
- (d) A user shall not use a NO_x credit to comply with a VOC requirement, and shall not use a VOC credit to comply with a NO_x requirement.
- (e) A user shall not use a VOC or NO_x credit based on emission reductions that occurred outside the ozone season to comply with any requirement during the ozone season.
- (f) A use period shall not exceed one year. However, a given use may be continued over consecutive use periods, provided that the notice requirements set forth at N.J.A.C. 7:27-30.15 and 30.16 are met for each use period.

- (g) Except in a case where the use is exempted from the requirement for a Notice of Intent to Use pursuant to N.J.A.C. 7:27-30.15(e), a use period shall not begin until a complete Notice of Intent to Use has been submitted to the registry in accordance with N.J.A.C. 7:27-30.15 and 30.19. Additionally:
1. If the user source is located within 100 kilometers of Edwin B. Forsythe National Wildlife Refuge ***(see Appendix C for a delineation of this area)***, the use period shall not begin until 30 days after the user submits a copy of the Notice of Intent to Use to the Federal Land Manager, pursuant to N.J.A.C. ***[7:27-30.19(j)]* 7:27-30.19(h)***; and
 2. If the user source is permitted under N.J.A.C. 7:27-8 or 22, and the use entails an increase in the actual emissions of any air contaminant (including, but not limited to, any "permit insurance" use listed at N.J.A.C. 7:27-30.14(d) ***[use]***), the use period shall not begin until seven days after the Notice of Intent to Use has been submitted to the Department as a seven-day-notice, pursuant to N.J.A.C. 7:27-8.3(k) or 22.22(d).
- (h) Whenever credits are used, the user shall retire 10 percent of the total number of the credits used for the benefit of the environment, unless the use is a "permit insurance" use pursuant to N.J.A.C. 7:27-30.14(d) and (e), in which case the user shall retire 20 percent of the total number of the credits used for the benefit of the environment. In determining the number of credits needed for a use, the credits required to be retired are additional to the credits otherwise required for the use.
- (i) The user shall hold DER credits as follows:
1. For ***[the following uses]* a "permit insurance" use pursuant to N.J.A.C. 7:27-30.14(d) and (e)***, the user shall hold the full quantity of DER credits needed for compliance during the use period by the day the Notice of Intent to Use is submitted to the registry*[:
 - i. A "permit insurance" use pursuant to N.J.A.C. 7:27-30.14(d) and (e); and
 - ii. A use which compensates for the increase in allowable emissions, if a permit limit is revised to become less stringent pursuant to N.J.A.C. 7:27-30.14(a)5]*;
 2. For a use of DER credits to meet emission offset requirements, the user shall hold DER credits as required pursuant to N.J.A.C. ***[7:27-30.14(g)]* 7:27-30.14(f)***;
 3. For a use for which no Notice of Intent to Use is required, pursuant to N.J.A.C. 7:27-30.15(e), the user shall hold the full quantity of DER credits required for compliance by the day the Notice of Use is submitted to the registry;

4. For any other use, the user shall hold the credits needed for compliance (including any credits required pursuant to N.J.A.C. 7:27- 30.13(d)2, 3 and 4ii, iii and iv) on any given date within the use period by the day before that date, except as provided at (i)5 below;
 5. If on any day within the use period the number of credits held by the user for the use is less than the number required to be held under (i)4 above, the number of DER credits needed for compliance for each day the shortfall occurs shall be tripled;
 6. Once a user holds a DER credit pursuant to (i)1 through 5 above, the user shall continue to hold the DER credits until the Notice of Use is filed; and
 7. In all cases the user is required to hold all DER credits needed for the use at the time the Notice of Use is submitted.
- (j) If any DER credit being held for a use pursuant to (i)***2 through 7*** above subsequently proves not to be needed for the use, the user may, after the Notice of Use is submitted, trade, voluntarily retire, or use these credits for other purposes allowed under this subchapter.
- (k) If a user has used a DER credit that is designated as invalid pursuant to N.J.A.C. 7:27-30.29(a) or cancelled pursuant to N.J.A.C. 7:27-30.29(b), the user shall, within 60 days after receiving notice of the invalidation or cancellation, submit to the registry an amendment of the Notice of Use which replaces the invalid DER credit with a valid credit, identified by its serial number.
- (l) If ***all*** the ***[verification]* *verifications*** of a DER credit that a user has used ***[is]* *are*** rendered invalid pursuant to N.J.A.C. 7:27-30.10(f) or (h), the user shall, within 60 days after receiving notice of the invalidation of the verification:
1. Ensure that a new Notice of Verification is submitted to the registry which verifies the original DER credit; or
 2. Submit to the registry an amendment of the Notice of Use which replaces the invalid DER credit with a verified credit, identified by its serial number.
- (m) The Department may request an interim calculation to determine whether the user source's use of credits, as of any date during the use period, has exceeded the maximum number of credits, as set forth by the user in the Notice of Intent to Use. The user shall submit the interim calculation to the Department within 15 days after receiving the Department's request.
- (n) Any person who submits a Notice of Intent to Use to the registry shall, after the use period, submit a Notice of Use, in accordance with N.J.A.C. 7:27-30.16, even if the person determines that no credits were used during the use period.

- (o) If a permittee wants more flexibility, with respect to applicable permit limits, than is allowed under the "permit insurance" provisions at N.J.A.C. 7:27-30.14(d) and (e), then the permittee may apply to the Department for approval of a 15-year plan for the permittee's facility, pursuant to N.J.S.A. 26:2C-9.2c(3).

7:27-30.13 VOC and NO_x credit use: computation of DER credits

- (a) A user shall calculate the following in accordance with this section and a quantification protocol that satisfies the requirements of N.J.A.C. 7:27-30.24 and 30.25:
1. If the user is required to hold the full number of DER credits needed for compliance when a Notice of Intent to Use is submitted pursuant to N.J.A.C. 7:27-30.12(i)1, the number of credits that need to be held; and
 2. The number of DER credits that were used during a use period.
- (b) The number of DER credits that need to be held pursuant to N.J.A.C. 7:27-30.12(i)1 when a Notice of Intent to Use is submitted shall be determined as follows:
1. Determine the maximum quantity of excess VOC or NO_x emissions from the user source, expressed in pounds, that may occur during the use period. The maximum quantity of excess emissions shall be 100 percent of the increase in allowed emissions (above the permit limit in the current permit) of the equipment or control apparatus during the use period. This shall be determined in accordance with the following formula:

$$EE = (CR - PL) (T)$$

where:

EE = the maximum quantity of excess emissions which may be released during the use period, expressed in pounds of VOC or NO_x ;

CR = the "ceiling rate," that is the maximum emission rate, specified by the user in the Notice of Intent to Use pursuant to N.J.A.C.7:27-30.14(d)1ii, which is allowed during the use period, expressed in the same units as used above for the permit limit;

PL = the permit limit which ***is currently in effect. This limit*** establishes the rate which is (in the absence of the use of credits) the maximum allowable emission rate for the user source, expressed in emissions per unit time. If the limit in the permit is given in emissions per unit of time, the units used for this rate shall be the same as are used in the permit; otherwise, the limit in the permit shall be converted to and expressed as pounds per hour;

***[CR = the "ceiling rate," that is the maximum emission rate, specified by the user in the Notice of Intent to Use pursuant**

- to N.J.A.C.7:27-30.14(d)1ii allowed during the use period, expressed in the same units as used above for the permit limit;]* **and***
- T = the **maximum*** amount of time *[in]* **within*** the use period **which the equipment or control apparatus is allowed to operate under its currently effective permit***, expressed in the same units for time as are used to express the permit limit and the ceiling rate; *[and
- iii. For any other use, the maximum quantity of excess emissions shall be the maximum emission increase specified by the user in the Notice of Intent to Use;]*
2. If the use of VOC or NO_x *[DER]* credits for compliance may result in increased actual emissions of VOC or NO_x, respectively, from one or more emissions sources other than the user source, located at the facility or offsite, add the quantity of those potential VOC or NO_x emission increases to the quantity of emission increases established under (b)1 above; **and***
3. Convert the quantity of VOC or NO_x emission increases determined pursuant to (b)1 and 2 above to the number of DER credits that need to be held when a Notice of Intent to Use is submitted as follows:
- i. Divide the quantity of emission increases calculated under (b)1 and 2 above, expressed in pounds, by 100;
- ii. If the user will submit the complete Notice of Intent to Use late, increase the quantity calculated under (b)3i above for such lateness in accordance with N.J.A.C. 7:27-30.15(b)*[3iii]*;
- iii. If the user fails to hold the full number of DER credits needed for compliance by the day the Notice of Intent to Use is submitted, increase the quantity calculated under (b)3i and ii above for such failure in accordance with N.J.A.C. *[7:27-30.12(i)3]* **7:27-30.12(i)5***;
- iv. In order to ensure that the requirement to retire 10 percent of the total number of credits being used (or, if the use is a "permit insurance" use pursuant to N.J.A.C. 7:27-30.14(d) and (e), 20 percent of the total number of credits used) for the benefit of the environment pursuant to N.J.A.C. 7:27-30.12(h) is met, divide the result obtained under (b)3i through iii above by the following:
- (1) If the use is a "permit insurance" use, by 0.8; and
- (2) Otherwise, by 0.9; and

- v. If the result obtained under (b)3iv above is a whole number, that is the number of DER credits that need to be held when a Notice of Intent to Use is submitted; otherwise round the result up to the next highest whole number to determine the number of DER credits that need to be held.
- (c) The number of DER credits that were used during a use period shall be determined as follows:
- 1. For uses subject to N.J.A.C. 7:27-30.12(i)1, where the full number of credits needed for compliance is to be held when the Notice of Intent to Use is submitted, the number of credits shall be determined in accordance with (b) above;
 - 2. Otherwise, the number shall be determined in accordance with (d) below.
- (d) Pursuant to (c)2 above, the number of DER credits that were used during a use period shall be determined as follows:
- 1. Determine the quantity of emission increases which need to be compensated for with credits as follows:
 - i. For use of credits to meet emission offset requirements under N.J.A.C. 7:27-30.14(g), the quantity shall be an amount that is equal, in emissions value, to the emission offset requirement established in the permit pursuant to N.J.A.C. 7:27-18.3(d);
 - ii. For use of credits for a delay of testing under N.J.A.C. 7:27-30.14(a)*[6ii]* ***5ii***, where the permittee has not provided a waiver pursuant to N.J.A.C. 7:27-8.28(b) or 22.18(l), the quantity shall be 100 percent of the allowable emissions of the equipment and/or control apparatus during the calendar quarters identified pursuant to N.J.A.C. 7:27-30.14(a)*[6ii(1)]* ***5ii(A)***. This quantity shall be determined assuming that the emissions equal the maximum allowed under the permit and that the activity level and/or hours of operation are also the maximum allowed;
 - iii. For use of credits to compensate for excess NO_x emissions during a MEG alert pursuant to N.J.A.C. 7:27-30.14(b)1, the quantity shall be determined pursuant to N.J.A.C. 7:27-19.24(b) and (c); and
 - iv. Otherwise, the quantity shall be determined by calculating the difference between the user source's actual emissions and its baseline emissions, for each interval within the use period where this difference is positive and then summing these differences. The following formula describes the calculation:

$$EI = \sum_I [(Actual\ Emissions) - (Baseline\ Emissions)]$$

where:

EI = the emission increases which need to be compensated for with credits, expressed in pounds of VOC or NO_x;

I = The number of intervals within the use period, where an interval is an extent of time, within a use period, throughout which the user source's actual emissions exceed its baseline emissions. (In a case where actual emissions continuously exceed baseline emissions throughout the use period there shall be only one interval within the use period);

Actual Emissions = for a given interval, the quantity of emissions that the user source actually emitted during the interval, expressed in pounds of VOC or NO_x;

Baseline Emissions = for a given interval, the quantity of emissions determined in accordance with (e) below, expressed in pounds of VOC or NO_x;

2. If the use of VOC or NO_x DER credits resulted in increased actual emissions of VOC or NO_x, respectively, from one or more emissions sources other than the user source, located at the facility or offsite, add the quantity of those actual VOC or NO_x emission increases to the quantity of emission increases established under (d)1 above; and
3. Convert the quantity of VOC or NO_x emission increases determined pursuant to (d)1 and 2 above to the number of DER credits needed for compliance as follows:
 - i. Divide the quantity of emission increases calculated under (d)1 and 2 above, expressed in pounds, by 100;
 - ii. If the user submitted a complete Notice of Intent to Use to the registry late, increase the quantity calculated under (d)3i above for such lateness in accordance with N.J.A.C. 7:27-30.15(b)3iii;
 - iii. If the user failed to hold the full number of DER credits needed for compliance by the day such holding is required pursuant to N.J.A.C. 7:27-30.12(i), for each day during the use period that the shortfall continued, triple the quantity calculated under (d)3i and ii above for such lateness in accordance with N.J.A.C. 7:27-30.12(i)3;
 - iv. *[If the use is a Class 3 "permit insurance" use, multiply the quantity calculated under (d)3i through iii above by 1.5 in accordance with N.J.A.C. 7:27-30.14(e)3;
 - v.]* In order to ensure that the requirement to retire 10 percent of the total number of credits used for the benefit of the environment pursuant to N.J.A.C. 7:27-30.12(h) is met, divide the result obtained under (d)3i, ii *[,* **and*** iii *[and iv]* above by 0.9; and

[vi.] *v.* If the result obtained under *[(d)4v]* ***(d)3iv*** above is a whole number, that is the number of DER credits needed for compliance; otherwise round the result up to the next highest whole number to determine the number of DER credits that were used during a use period.

- (e) The quantity of baseline emissions shall be determined as follows:
1. Baseline emissions shall be zero for the additional hours of operation, if the use entails increasing the user source's hours of operation beyond the maximum hours of operation specified in a permit; and
 2. Otherwise baseline emissions shall be the emissions that the user source would have emitted if:
 - i. The user source's emissions rate equals the lowest allowable emission rate applicable during the use period, minus a design margin; and
 - ii. The user source's activity level and hours of operation are the lower of the following:
 - (1) The design capacity of the *[emission]* ***emissions*** source; or
 - (2) If applicable, the maximum allowed under its permit.
- (f) If part of the use period falls within the ozone season and part outside the ozone season, a user shall perform the calculations in (b) and (c) above separately for these two portions of the use period.

7:27-30.14 VOC and NO_x credit use: required, authorized and prohibited uses

- (a) The owner or operator of an emissions source shall use VOC or NO_x credits for compliance if such use is required under another provision of this chapter. Required uses of DER credits include:
1. Pursuant to N.J.A.C. 7:27-16.17(m), compensation for excess VOC emissions authorized under an alternative VOC control plan submitted to the Department for approval after August 2, 1996;
 2. Pursuant to N.J.A.C. 7:27-19.13(i), compensation for excess NO_x emissions authorized under an alternative maximum allowable emission rate submitted to the Department for approval after August 2, 1996;
 3. Pursuant to N.J.A.C. 7:27-19.23, compensation for any emissions attributable to the difference between the rate of NO_x emissions established as a limit which is to be attained under an innovative control technology plan approved pursuant to N.J.A.C.

7:27-19.23, and the actual rate of NO_x emissions after the date set pursuant to N.J.A.C. 7:27- 19.23(c)2v on which the innovative control technology is required to be constructed and/or installed and full compliance attained;

4. Pursuant to N.J.A.C. 7:27-19.24(c), compensation for NO_x emissions from an electric generating unit during a MEG alert that exceed the applicable permit limit;
- *[5. Pursuant to N.J.A.C. 7:27-8.4(r) or 22.3(uu), compensation for the increase in allowable emissions from equipment and/or control apparatus resulting from the replacement of the BACT or LAER limit in the permit with a less stringent limit, or the replacement with a less stringent limit of any limit in an approved permit to reflect that the equipment and/or control apparatus incorporate advances in the art of air pollution control pursuant to the requirements of N.J.A.C. 7:27-8.4(d) or 22.35(a);]* and

[6.] ***5.*** Pursuant to N.J.A.C. 7:27-8.3(l) or *[22.3(vv)]* ***22.3(uu)***, *[in addition to any penalties which may apply,]* compensation for a failure to perform timely testing of the VOC and/or NO_x emissions of equipment or control apparatus. ***If the testing delay is not approved by the Department, this compensation is in addition to any penalties which may apply.*** This paragraph shall apply in cases where testing* required by a date established pursuant to N.J.A.C. 7:27-8 or 22 and/or the applicable permit, or pursuant to a written request by the Department pursuant to N.J.A.C. 7:27-8.4(f) or 8.7(f)*, is not performed *[by a date that is]* ***within*** 90 days after the ***established*** date *[by which the testing is required to be performed]*. Determination of the amount of compensation shall be based on the following:

- i. If the permittee has requested and obtained approval of the Department for a delay in testing pursuant to N.J.A.C. 7:27-8.28(a) or 22.18(k), if the permittee has waived its right to assert that its emissions during the period of delay were any different than the emissions measured by the test when performed (or, if applicable, the emissions calculated based on the measurements taken) pursuant to N.J.A.C. 7:27- 8.28(b) or 22.18(l), and if the testing is performed on the original equipment or control apparatus (not on replacement or reconstructed equipment or control apparatus which is subsequently installed), the following apply:

- (1) The permittee shall record the hours of operation of the equipment or control apparatus from the date the testing was originally required to be performed until the date the testing is completed, and shall make such records available to the Department upon request;

- (2) The use period shall ***be*** determined as follows:

- (A) If the *[emission]* ***emissions*** source is a new or modified source, the use period shall begin on the date the new or

modified source commenced operating; otherwise, the use period shall begin on the date by which the testing was required to be performed;

- (B) The use period shall end on the earlier of the following: the date that the testing is completed, or the date which is the last day of the one year period which begins the first day of the use period;
- (3) The determination of the source's actual emissions shall be based on the result obtained from the testing, whenever the testing is completed; and
- (4) The compensation shall be for emissions in excess of the applicable permit limit, and the quantity of emission increases which need to be compensated for with credits shall be calculated pursuant to N.J.A.C. 7:27-30.13(d)iv;

ii. Otherwise, the following apply:

- (1) The permittee shall determine which calendar quarters fall, in whole or in part, in the period defined as follows:
 - (A) The first *[day of the period is]* **calendar quarter is the calendar quarter which includes*** the *[day]* **date*** that is 90 days after the day by which the testing was required to be performed; and
 - (B) The last *[day of the period]* **calendar quarter*** is **the calendar quarter which includes*** the earlier of the following: the date that the testing is completed or the date that is one year and 90 days after the day by which the testing was required to be performed;
- (2) The **initial*** use period shall begin on the first day of the *[first]* **calendar*** quarter determined pursuant to *[a)6ii(1)]* **(a)5ii(A)(1)*** above *[and]* **The final use period*** shall end on the *[date that the testing is completed]* **last day of the calendar quarter determined pursuant to (a)5ii(A)(2) above. If the total number of calendar quarters is four or less, the calendar quarters may be combined into a single use period***; and
- (3) The compensation shall be for the source's allowable emissions, in full, for all of the quarters determined pursuant to *[a)6ii(1)]* **(a)5ii(A)*** above, and the quantity of emission increases which need

to be compensated for with credits shall be calculated pursuant to N.J.A.C. 7:27-30.13(d)ii; but

- iii. Notwithstanding ~~[(a)6i]~~ ***(a)5i*** and ii above, no compensation is required if the delay is at the request of the Department; and

~~*[7.]*~~ ***6.*** Pursuant to N.J.A.C. 7:27-8.3(l) or ~~*[22.3(vv)]*~~ ***22.3(uu)***, in addition to any penalties which may apply, compensation for an exceedance of a ***VOC or NO_x*** permit limit which results from operation of equipment, if the permittee has failed to install or operate a control apparatus required by a permit, or if the control apparatus serving the equipment has broken down or is dysfunctional.

- (b) ~~*[The]*~~ ***A*** person may use DER credits ***, which have been verified in accordance with N.J.A.C. 7:27-30.10,*** in full or partial settlement of a monetary penalty pursuant to N.J.A.C. ~~*[7:27A-3]*~~ ***7:27A-3.10(i)***.

- (c) A person may use VOC or NO_x credits to comply with an emission limit established under this chapter, unless the use is prohibited by Federal or State law or is prohibited pursuant to ~~*[(h)]*~~ *** (g) *** or ~~*[(i)]*~~ *** (h) *** below. Examples of authorized uses include:

1.-2. (No change.)

- 3. Compliance with a VOC content requirement for an architectural coating or for a consumer or commercial product pursuant to N.J.A.C. 7:27-23 or 24; however, use of DER credits does not relieve a person from responsibility for complying with the Federal architectural coating requirements at 40 CFR Part 59, Subpart D;
- 4. Compliance with any VOC or NO_x emissions limit established in a rule which becomes operative on or after August 2, 1996, unless the use of DER credits for such purpose is expressly prohibited;
- 5. Compliance with emission offset requirements under N.J.A.C. 7:27-18, in accordance with (g) below; and
- 6. For municipal waste combustors subject to 40 CFR Part 60, Subpart Cb, compliance with the NO_x requirements established pursuant to that subpart. (This does not apply however to a Standard of Performance for New Stationary Sources (commonly referred to as a New Source Performance Standard or NSPS) established under 42 U.S.C. § 7411.)

- (d) Notwithstanding any provision of N.J.A.C. 7:27-8 or 22 to the contrary, a permittee may use VOC or NO_x credits for "permit insurance" to comply ***, respectively,*** with a ~~*[permit]*~~ ***VOC or NO_x emissions*** limit ***in a permit***. However, no permittee may implement a permit insurance use, unless the use belongs to one of the classes of "permit insurance" uses listed in (e) below and the following conditions are met:

1. In the Notice of Intent to Use, in addition to meeting the requirements for such a notice at N.J.A.C. 7:27-30.15, the user shall include the following:
 - i. Specify the length of the use period to be one, two, three, or four calendar quarters;
 - ii. Specify the maximum VOC or NO_x emission rate (that is, the "ceiling rate") for the user source during the use period, given in emissions per unit time. This rate shall be an enforceable limit which may not be exceeded during the use period. For a Class 2 permit insurance use as described at (e)2 below, the ceiling rate shall not exceed the corresponding permit limit proposed in the pending permit application; and
 - iii. Include the statements required pursuant to N.J.A.C. 7:27- 30.15(d)13;
2. The Notice of Intent to Use is submitted as seven-day-notice, in accordance with N.J.A.C. *[7:27-30.19(h)]* ***7:27-30.19(g)***;
3. More than one "permit insurance" use may be implemented concurrently at a facility; however, the resulting increase at the facility in actual emissions shall not exceed five tons of VOC or 10 tons of NO_x for all "permit insurance" uses combined, as determined for any 12 month period;
4. *[The use period for a Class 3 permit insurance use shall at a maximum be one year from the date the initial use period begins.]* The duration of a *[Class 1 or Class 2]* permit insurance use shall *[also]* be limited to a maximum of one year unless:
 - i. One of the following apply:
 - (1) The permittee has obtained a permit modification or revision which addresses the original reason permit insurance was needed, and the subsequent use goes beyond the original purpose (that is, entails a higher ceiling rate, a higher activity level, or more hours of operation); or
 - (2) The subsequent use is for a different purpose; or
 - ii. The maximum emission rate (that is, the "ceiling rate") specified in the Notice of Intent to Use pursuant to (d)1ii above for the subsequent use is less than the rate at which an exceedance of the lowest allowable rate of emissions of VOC and/or NO_x, as applicable, for the equipment or control apparatus would be defined as a high priority violation, pursuant to EPA's "Timely and Appropriate (T&A) Enforcement Response to High Priority Violations (HPVs)" guidance document;

5. The number of DER credits used for compliance is the number of credits that is required to be held when the Notice of Intent to Use is submitted. This is the number determined pursuant to N.J.A.C. 7:27- 30.13(b);
 6. The use will not result in:
 - i. Emissions of an air contaminant not authorized to be emitted under the existing (approved) permit; and
 - ii. Actual emissions of any air contaminant, other than the air contaminant (VOC or NO_x) emissions which is being compensated for with credits, at a level which exceeds a limit in the permit for that air contaminant; and
 7. The use is not one of the uses prohibited pursuant to (h) or (i) below.
- (e) The classes of "permit insurance" uses are as follows:
1. A Class 1 "permit insurance" use applies in cases where actual emissions from existing equipment or control apparatus may exceed a permit limit due to a change in operation, including, but not limited to, the use of a new raw material or the increase in the source's activity level. A use shall belong to this class only if:
 - i. The permittee has not made any physical change to the equipment or control apparatus for which a permit modification or revision is required; and
 - ii. One of the following apply at the time the Notice of Intent to Use is submitted:
 - (1) The permittee has not submitted a permit application to the Department for the change in operation; or
 - (2) The permittee has submitted a permit application for the change in operation, but the Department has not yet acted upon (approved or disapproved) the application; ***and***
 2. A Class 2 "permit insurance" use applies in cases where a permittee has submitted a permit application for a physical change to existing equipment or control apparatus and has constructed and/or installed the change, but the Department has not yet approved or disapproved the application; therefore ***[there is no approved permit]*** ***any new emissions*** limit ***[which applies]*** ***sought in the permit application has not yet received Department approval***. Class 2 "permit insurance" allows a permittee to operate the equipment or control apparatus ***in accordance with changes in the permit application*** prior to the Department issuing the revised permit. A user may use Class 2 "permit insurance" only if the user understands and agrees that if during the use period the user source's actual VOC and/or NO_x emission rate exceeds the limit included in the revised permit, as eventually approved by the

Department, the permittee shall be considered to have violated the limit and may be subject to penalties under N.J.A.C. 7:27A-3 *[]; and

3. A Class 3 "permit insurance" use applies in cases where testing shows that new or modified equipment or control apparatus has failed to meet an emission limit in its permit. Class 3 "permit insurance" allows a permittee to operate the equipment or control apparatus, even though the actual VOC or NO_x emissions from the equipment or control apparatus may exceed a limit (including but not limited to a BACT or LAER limit, or a limit which reflects that the equipment or control apparatus incorporates advances in the art of air pollution control pursuant to the requirements of N.J.A.C. 7:27-8.4(d) or 22.35(a)). A credit surcharge of 1.5:1.0 is applicable to a Class 3 "permit insurance" use pursuant to N.J.A.C. 7:27-30.13(d)3iv, in lieu of the emission source being subject to additional penalties for operating after the testing failure. A use shall belong to this class only if:
 - i. The new or modified equipment or control apparatus has been properly constructed and/or installed;
 - ii. The new or modified equipment or control apparatus is being properly operated and maintained; and
 - iii. The permittee is expeditiously taking all reasonable steps needed to remedy any discrepancy between the permit limit and the actual emissions from the equipment or control apparatus]*.

[(f)] The person may use DER credits as part of an affirmative defense demonstration to show that the person has taken all reasonable steps to minimize emissions.]

[(g)] *[(f)]* A person may use VOC or NO_x credits to comply with the emission offset requirements of N.J.A.C. 7:27-18. However, no person shall use credits to meet emission offset requirements unless all of the following requirements are satisfied:

1. The generation and use of the DER credits meets all applicable requirements of 42 U.S.C. § 7503, 40 CFR 51.165(a), N.J.A.C. 7:27-18, and this subchapter, except as follows:
 - i. The permittee is not required to include in the emission offset demonstration submitted with the permit application a representation that the emission reductions on which the DER credits are based are permanent, notwithstanding N.J.A.C. 7:27-18.3(e);
 - ii. The permittee is not required to hold the DER credits prior to using them, notwithstanding N.J.A.C. 7:27-30.12(i);
 - iii. The permittee is not required to have the DER credits verified prior to using them, notwithstanding N.J.A.C. 7:27-30.12(c); and

- iv. The permittee is not required to submit a complete Notice of Use within 30 days after the end of each use period, notwithstanding N.J.A.C. 7:27-30.16(a);
- 2. The use is proposed in the permit application submitted pursuant to N.J.A.C. 7:27-18 and 22, and in addition to meeting the requirements at N.J.A.C. 7:27-18(e), the permit application shall include the following:
 - i. A draft initial Notice of Intent to Use is included in the permit application, which includes the quantification protocols both for the generation of the DER credits proposed to be used and for the proposed use; and
 - ii. A demonstration that the permit applicant will be able, by relying on a series of consecutive temporary reductions, to obtain sufficient DER credits to satisfy the need for credits for the shorter of the following periods:
 - (1) The period that the user proposes to use DER credits to meet emission offset requirements; or
 - (2) The period that extends until the applicable primary standard attainment date established under 42 U.S.C. § 7511(a); and
- 3. In the permit issued pursuant to N.J.A.C. 7:27-22 and 18, the Department has approved the use of DER credits to comply with the emission offset requirements, and the approved permit includes the following as enforceable conditions:
 - i. The DER credits shall be generated during the use period in which they are used;
 - ii. Each year, the permittee shall submit a Notice of Intent to Use prior to the beginning of the use period, in accordance with N.J.A.C. 7:27-30.15. The notice shall include a legally binding commitment from one or more DER credit generators to generate the DER credits needed by the permittee for the upcoming use period and to transfer those DER credits to the user prior to the date the user's Notice of Use is due;
 - iii. The permittee shall continue to submit such a Notice of Intent to Use pursuant to (g)3 above for the shortest of the following periods:
 - (1) The life of the equipment;
 - (2) Until credits which meet the standards for creditable emission reductions at N.J.A.C. 7:27-18.5 are secured for use as emission offsets; or
 - (3) Until emission offset requirements no longer apply to the equipment;

- iv. The permittee shall submit each Notice of Intent to Use in accordance with N.J.A.C. 7:27-30.19;
- v. For each use period, the permittee shall submit a complete Notice of Use no later than 120 days after the last day of the use period; and
- vi. The permittee shall hold the DER credits needed for compliance and ensure that they are verified prior to the submission of the Notice of Use.

[(h)] ~~*(g)*~~ The owner or operator of an emissions source shall not use VOC or NO_x credits for any of the following purposes:

- 1. To avoid the applicability of:
 - i. The Federal requirements for review of new sources and modifications at 40 CFR 51, Subpart I, and/or the State emission offset requirements at N.J.A.C. 7:27-18;
 - ii. The Federal prevention of significant deterioration requirements at 40 CFR 52.21; or
 - iii. The Federal operating permit requirements at 40 CFR 70.
- 2. To comply with new source performance standards (NSPS) under 42 U.S.C. § 7411, lowest achievable emission rate (LAER) standards under 42 U.S.C. § 7503(a)(2), best available control technology (BACT) standards under 42 U.S.C. § 7475(a)(4), standards for hazardous air pollutants (HAPs) under 42 U.S.C. § 7412, standards for solid waste combustion under 42 U.S.C. § 7429 (except for a municipal waste combustor subject to 40 CFR 60, Subpart Cb, using DER credits for compliance with NO_x requirements pursuant to (b)6 above), acid deposition control requirements under 42 U.S.C. § 7651 through 7651o, or requirements under N.J.A.C. 7:27- 8.12 for documentation of state of the art (SOTA) or under N.J.A.C. 7:27-22.35 for incorporation of advances in the art of air pollution control;
- 3.-5. (No change.)
- 6. To comply with ozone control standards set under 42 U.S.C. § 7511b, except for NO_x RACT or VOC RACT requirements set forth at N.J.A.C. 7:27-16 or 19;
- 7. To comply with the State prohibition of air pollution at N.J.A.C. 7:27- 5 or with the similar requirements at N.J.A.C. 7:27-8.3(j) and at N.J.A.C. 7:27-22.16(g)8; or
- 8. To avoid having the facility becoming a "major facility," as defined at N.J.A.C. 7:27-22.1.

[(i)] ~~*(h)*~~ A use of DER credits is prohibited if it may result in any of the following:

1. An increase in emissions (from the emissions source or from any other source at the facility or off-site) of any HAP ***from a level*** which exceeds ***the applicable SOTA Threshold set forth in Table A or Table B at N.J.A.C. 7:27-8, Appendix 1, to a higher level. This SOTA Threshold level is*** the de minimis level designated for that HAP by the EPA pursuant to 42 U.S.C. § 7412(g). The de minimis levels are as currently set forth in a proposed rule at 59 F.R. 15504 (April 1, 1994). If the EPA adopts a final rule or publishes a new proposed rule to designate the de minimis levels, the Department will revise this paragraph through an administrative correction pursuant to N.J.A.C. 1:30-2.7;
 2. An increase in the source's emissions of a HAP from a level below the applicable ***[emission threshold]* *SOTA Threshold*** set forth in Table ***[C]* *A*** or Table ***[D]* *B*** at N.J.A.C. 7:27-8, Appendix ***[I]* *1***, to a level above the threshold; or
 3. An increase in emissions of any air contaminant which would cause an exceedance of an applicable limit, including a permit limit, except under the terms set forth for such increases at N.J.A.C. 7:27-30***.14***(a)3 and ***[5]* *4***, (b), (c)6 and (d).
- *[j]** Notwithstanding (e)3 above, the Department at its discretion may deny any specific use of Class 3 "permit insurance," if the Department finds that such a use may cause a violation of N.J.A.C. 7:27-5, Prohibition of Air Pollution, or that the permittee has violated one or more other provisions of the permit (in addition to exceeding the VOC or NO_x limit). In such case the Department shall so inform the permittee in writing and shall give its reasons for the denial.]*

7:27-30.15 VOC and NO_x credit use: Notice of Intent to Use

- (a) ***[A]* *On and after June 6, 2000, a*** user shall submit a Notice of Intent to Use in accordance with this section, the general notice requirements at N.J.A.C. 7:27-30.18, and the requirements for submission of notices at N.J.A.C. 7:27-30.19.***A Notice of Intent to Use submitted prior to June 6, 2000 shall conform with the applicable requirements promulgated on August 5, 1996, at 28 N.J.R. 3786(b).***
- (b) A complete Notice of Intent to Use or amendment is due to the registry 30 days before the first day of the use period. If the registry receives the complete notice late, then the number of DER credits needed for the use shall be increased as follows:
 1. Determine the dates which fall within the 30-day period following the date the complete notice is received by the registry;
 2. Pursuant to N.J.A.C. 7:27-30.13, determine the number of credits needed to compensate for the emissions which were emitted on the dates within the use period which also fall within the 30-day period; and

3. Multiply this number of credits by 1.5 to determine the total number of credits that, given the lateness of the submission, is required to be used for those dates.
- (c) Generally, a Notice of Intent to Use shall apply to a single *[emission]* ***emissions*** source. However, a single Notice of Intent to Use may apply to any of the following groups of sources, if the use is for compliance with a common regulatory requirement:
1. All *[emission]* ***emissions*** sources owned by a single person and subject to an averaging plan approved by the Department pursuant to N.J.A.C. 7:27- 19.6;
 2. A specified group of more than one stationary sources of the same type located at a single facility;
 3. Units of a product manufactured by a single person(including a motor vehicle fuel) during their storage, distribution, and/or use; or
 4. A fleet of motor vehicles.
- (d) A Notice of Intent to Use shall include the following:
1. The name and address of the user, the user's type of business (for example, electric utility or architectural coating manufacturer), and other pertinent identifying information including the name and telephone number of a contact person;
 2. For the user source(s), the identifying information specified at N.J.A.C. 7:27-30.18(d);
 3. The requirements in the law, regulation, permit, or order with which the user intends to comply through the use of DER credits, together with an explanation as to why the user is using credits to comply with these requirements (such as, because it is a cost-effective alternative to installing new control apparatus, or because control apparatus required by a permit has not yet been installed);
 4. The month, day, and year of the first and last dates of the use period;
 5. The following quantification protocol (or, if a protocol approved by EPA or the Department shall be used, citation of the protocol):
 - i. If the use is one where the full number of DER credits needed for compliance is required to be held when a Notice of Intent to Use is submitted pursuant to N.J.A.C. 7:27-30.12(i)1, the protocol used to calculate the number of DER credits that need to be held; or
 - ii. Otherwise, the protocol that will be used in the Notice of Use to calculate the number of DER credits used;

6. If the use is one where the full number of DER credits needed for compliance is required to be held when a Notice of Intent to Use is submitted pursuant to N.J.A.C. 7:27-30.12(i)1, the following:
 - i. The maximum quantity of excess emissions calculated pursuant to N.J.A.C. 7:27-30.13(b)1, both for the ozone season and for the use period as a whole;
 - ii. The number of VOC credits or NO_x credits to be needed for the use calculated pursuant to N.J.A.C. 7:27-30.13(b); and the number of VOC credits or NO_x credits held for the use, with the number for the ozone season and for the use period as a whole given separately; and
 - iii. For each DER credit held for the use, its serial number, the location where the DER credit was generated, and a statement as to whether the credit was generated during the ozone season or outside the ozone season, with the DER credits of each type (VOC or NO_x) generated during the ozone season and outside the ozone season listed separately; and
 - iv. All supporting documentation required to be submitted with the *[notice]* ***Notice of Intent to Use*** pursuant to the quantification protocol specified pursuant to (d)5i above (the documentation shall, at a minimum, conform with N.J.A.C. 7:27- 30.25);
7. If the use is one where the full number of DER credits needed for compliance is not required to be held when a Notice of Intent to Use is submitted pursuant to N.J.A.C. 7:27-30.12(i)1, an estimate of the maximum number of DER credits that will be used during the use period;
8. If the use of ***DER*** credits may ***reasonably be expected to*** result in an increase, de minimis or otherwise, in the actual emissions of any HAP, ***either at the facility or off-site,*** the name of the HAP specie(s) that may have increased emissions and the maximum amount of the increase, together with specification as to whether the increase is expected from the user source, from other source(s) at the facility, and/or from source(s) off-site;
9. If the use is one of the "permit insurance" uses listed at N.J.A.C. 7:27-30.14(e), the items required pursuant to N.J.A.C. 7:27- 30.14(d)1;
10. If the use is compliance with the emission offset requirements of N.J.A.C. 7:27-18, the legally binding commitment required pursuant to N.J.A.C. 7:27-30.14(g)3ii;
11. The following statements:
 - i. The intended use is not prohibited under this subchapter or other provisions of law; and

- ii. The quantification protocol to be used in the Notice of Use to calculate the number of DER credits used with the notice meets the requirements of N.J.A.C. 7:27-30.24 and 30.25;
- 12. If the use is one where the full number of DER credits needed for compliance is required to be held when a Notice of Intent to Use is submitted pursuant to N.J.A.C. 7:27-30.12(i)1, the following statements:
 - i. All calculations relied on in the notice, including, but not limited to, quantification of the number of DER credits that need to be held when the Notice of Intent to Use is submitted, have been performed in accordance with N.J.A.C. 7:27-30.13 and with a quantification protocol that meets the requirements of N.J.A.C. 7:27-30.24 and 30.25;
 - ii. For this use, the user holds the number of NO_x DER credits or VOC DER credits that the user is required to hold, as determined in accordance with N.J.A.C. 7:27-30.13(b), both for the ozone season and for the use period as a whole, and will continue to hold these credits until the Notice of Use is submitted; and
 - iii. The maximum number of NO_x DER credits or VOC DER credits that will be used during the use period pursuant to this notice will not exceed, during either the ozone season or the use period as a whole, the number of credits the user is required to hold when this notice is submitted, as determined in accordance with N.J.A.C. 7:27-30.13(b);
- 13. If the use is one of the "permit insurance uses" listed at N.J.A.C. 7:27-30.14(e), the following statements:
 - i. The use will not cause "air pollution" pursuant to N.J.A.C. 7:27- 5, including, but not limited to, unreasonable emission of odors, acid droplets, or materials that cause spotting; and
 - ii. The user source's actual emission rate will not exceed the ceiling rate, specified pursuant to N.J.A.C. 7:27-30.14(d)1ii, at any time during the use period;
- 14. If the use is for compliance with emission offset requirements pursuant to N.J.A.C. 7:27-30.14(g), a statement that the use is approved in the permit issued pursuant to N.J.A.C. 7:27-22 and 18, together with the log number of the permit in which the approval is set forth;
- 15. Any other information required pursuant to N.J.A.C. 7:27- 30.18(c); and
- 16. The certification by the user as required at N.J.A.C. 7:27- 30.18(g).

- (e) Notwithstanding (a) above, if a person is using DER credits for any of the following, such person is not required to submit a Notice of Intent to Use:
1. A person using credits in full or partial settlement of a monetary penalty pursuant to N.J.A.C. 7:27-30.14(b) due to past emission exceedances; however, this exemption from Notice of Intent to Use requirements does not apply if the settlement is for future exceedances; ***and***
 - *[2.]** A person using credits as part of an affirmative defense demonstration pursuant to N.J.A.C. 7:27-30.14(f); and**]***
 - *[3.]** ***2.*** A person compensating for NO_x emissions in excess of the applicable permit limit from an electric generating unit during a MEG alert, pursuant to N.J.A.C. 7:27-19.24(c).

7:27-30.16 VOC and NO_x credit use: Notice of Use

- (a) Within 30 days after the end of each use period, the user shall submit a complete Notice of Use ***. If the corresponding Notice of Intent to Use was submitted to the registry on or after June 6, 2000, the Notice of Use shall be submitted*** in accordance with this section, the general notice requirements at N.J.A.C. 7:27-30.18, and the requirements for submission of notices at N.J.A.C. 7:27-30.19. ***If the corresponding Notice of Intent to Use was submitted to the registry prior to June 6, 2000, the Notice of Use shall be submitted in accordance with the applicable requirements promulgated on August 5, 1996, at 28 N.J.R. 3786(b).***
- (b) A Notice of Use shall include the following:
1. For each item of information set forth pursuant to N.J.A.C. 7:27-30.15(d)1 through 6 in the Notice of Intent to Use (or subsequent amendment thereto), either confirmation that the information is still correct; or the corrected information, together with the basis therefor;
 2. The number of VOC credits and the number of NO_x credits that have been used, determined as follows:
 - i. If the use is one where the full number of DER credits needed for compliance is required to be held when a Notice of Intent to Use is submitted pursuant to N.J.A.C. 7:27-30.12(i)1, the number shall be determined pursuant to N.J.A.C. 7:27-30.13(b) and shall be the credits identified in the Notice of Intent to Use pursuant to N.J.A.C. 7:27-30.15(d)6iii; and
 - ii. Otherwise, the number shall be determined pursuant to N.J.A.C. 7:27-30.13(c);

3. For each DER credit being used pursuant to (b)2ii above, its serial number, the location where the DER credit was generated, whether it was generated during the ozone season or outside the ozone season, with the DER credits used for ozone season compliance listed separately;
4. If the use resulted in an increase in the actual emissions of any HAP, the name of the HAP specie(s) that had increased emissions and the amount of the increase, de minimis or otherwise, together with specification as to whether the increase was from the generator source, from other source(s) at the facility, and/or from source(s) off-site;
5. The following demonstrations:
 - i. A demonstration that the required number of DER credits were held by the day they were required to be held, pursuant to N.J.A.C. 7:27- 30.12(i); and
 - ii. If the use is one where the full number of DER credits needed for compliance is required to be held when a Notice of Intent to Use is submitted pursuant to N.J.A.C. 7:27-30.12(i)1, a demonstration that actual emissions of VOC or NO_x during the use period, both for the ozone season and for the use period as a whole, did not exceed the maximum quantity of excess emissions calculated in the Notice of Intent to Use, pursuant to N.J.A.C. 7:27-30.13(b)1;
6. If the use is one of the "permit insurance" uses listed at N.J.A.C. 7:27-30.14(e), the following additional demonstrations:
 - i. A demonstration that the actual emission rate at no time during the use period exceeded the "ceiling rate" specified in the Notice of Intent to Use; and
 - ii. A demonstration that the emission increase resulting from the use, together with the emission increases resulting from any other "permit insurance" uses that were simultaneously implemented at the facility did not exceed five tons of VOC or 10 tons of NO_x, during any 12 month period. Such demonstration shall be based on calculation of actual emissions, using the methods set forth at N.J.A.C. 7:27-30.13(c)2i and ii;
7. All supporting documentation required to be submitted with the Notice of Use pursuant to the approved quantification protocol which, at a minimum, shall conform with N.J.A.C. 7:27-30.25;
8. The following statements:
 - i. The use of DER credits has been carried out in accordance with this subchapter and all other applicable provisions of law;

- ii. All calculations relied on in the notice have been performed in accordance with N.J.A.C. 7:27-30.13 and with the quantification protocol specified pursuant to N.J.A.C. 7:27-30.15(d)5 in the corresponding Notice of Intent to Use;
 - iii. All supporting documentation required to be submitted with the notice pursuant to the approved quantification protocol or under N.J.A.C. 7:27-30.25 is enclosed; and
 - iv. The information in the registry and in the user's own records indicate that the DER Credits used have not been previously used, retired, canceled, or found invalid by the Department or EPA;
9. Any other information required pursuant to N.J.A.C. 7:27- 30.18(c); and
10. The certification by the user as required at N.J.A.C. 7:27- 30.18(e).
- (c) For a use exempted, pursuant to N.J.A.C. 7:27-30.15(e), from the requirement to submit a Notice of Intent to Use, the Notice of Use shall meet the requirements in (b) above, except as follows:
- 1. For a person using credits in full or partial settlement of a monetary penalty, the following apply:
 - i. In lieu of (b)1 above, the Notice of Use shall include the information required at N.J.A.C. 7:27-30.15(d)1 through 3; however, the requirements of N.J.A.C. 7:27-30.15(d)4 through 6 shall not apply;
 - ii. In lieu of (b)2 above, the Notice of Use shall include the number of VOC credits and the number of NO_x credits agreed to by the Department's Office of Air and Environmental Quality Compliance and Enforcement;
 - iii. In lieu of (b)3 above, the Notice of Use shall give the serial number of each DER credit being used;
 - iv. The requirements of (b)4 through 7, and (b)8ii and iii, shall not apply; and
 - v. The Notice of Use shall include the log number(s) of the enforcement action(s) for which the DER credits are being used; and
 - 2. For a person using credits *[as part of an affirmative defense demonstration pursuant, or for a person compensating]* **to compensate*** for excess NO_x emissions during a MEG alert, the following apply:

- i. In lieu of (b)1 above, the Notice of Use shall include the information required at N.J.A.C. 7:27-30.15(d)1 through 5; however, the requirements of N.J.A.C. 7:27-30.15(d)6 shall not apply; and
 - ii. The requirements of (b)5 and 6 shall not apply.
- (d) Submission of a Notice of Use shall constitute a confirmation that the DER credits identified pursuant to (b)2 above have been used. These credits shall not subsequently be traded, retired, or used.

7:27-30.17 GHG credit use (Reserved)

7:27-30.18 General notice requirements

- (a) This section establishes general requirements for any of the following notices submitted pursuant to this subchapter:
 - 1. A Notice of Generation pursuant to N.J.A.C. 7:27-30.7;
 - 2. A Notice of Transfer pursuant to N.J.A.C. 7:27-30.9;
 - 3. A Notice of Verification pursuant to N.J.A.C. 7:27-30.10;
 - 4. A Notice of Retirement pursuant to N.J.A.C. 7:27-30.11.
 - 5. A Notice of Intent to Use pursuant to N.J.A.C. 7:27-30.15; and
 - 6. A Notice of Use pursuant to N.J.A.C. 7:27-30.16.
- (b) A person submitting a notice shall submit the notice on a form obtained from the registry.
- (c) In each notice, the person submitting a notice shall include the following information, as applicable:
 - 1. The items specified at N.J.A.C. 7:27-30.7, 30.9, 30.10, 30.11, 30.15 or 30.16, as applicable; and
 - 2. The name and telephone number of the contact person who will provide, to any person who may request it, the opportunity to inspect a copy of the notice and/or any supporting documentation required for the notice or relied on pursuant to the quantification protocol.

- (d) In a Notice of Generation, a Notice of Intent to Use, or (if applicable) a Notice of Use, the generator or user shall include for the generator or user source(s) the following identifying information:
1. If the source(s) is a stationary source or a group of stationary sources at a facility, a description of the source, including any applicable identifying numbers (for example, plant ID number, a stack ID number, and/or a permit ID number); and the address and county of the source, including specification of where it is located within the facility; or
 2. If the source(s) is a mobile source, a nonroad source, or a group of stationary sources at various locations, a description of the source, including any applicable identifying numbers (for example, vehicle ID number); and the county(s) (and if feasible the specific locations) where the source(s) are operated.
- (e) Except pursuant to (f) and (g) below, any person who submits a notice or an amendment thereto pursuant to this subchapter shall include, as an integral part of the notice or amendment, the following two-part certification:
1. A certification, signed by the individual or individuals (including any consultants) with direct knowledge of and responsibility for the information contained in the certified document. The certification shall state:
"I certify under penalty of law that I believe the information provided in this document is true, accurate and complete. I am aware that there are significant civil and criminal penalties, including the possibility of fine or imprisonment or both, for submitting false, inaccurate or incomplete information."
 2. A certification signed by a responsible official, as defined at N.J.A.C. 7:27-1.4, which states:
"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attached documents and, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil and criminal penalties, including the possibility of fine or imprisonment or both, for submitting false, inaccurate or incomplete information."
- (f) The certification at (e)2 above shall not be required if the individual required to sign the certification in (e)1 above is the same individual required to sign the certification in (e)2 above.
- (g) Instead of using the certification given at (e) above, a prospective user of DER credits shall certify a Notice of Intent to Use, or an amendment thereto as follows:

"I certify under penalty of law that I believe the information provided in this Notice of Intent to Use is true, accurate and complete. For those portions of the information in this Notice that are based on estimates, those estimates are the result of good faith application of sound professional judgment, using techniques, factors, or calculations approved by the Department or EPA or generally accepted in the trade. I am aware that there are significant civil and criminal penalties, including fines or imprisonment or both, for submitting false, inaccurate or incomplete information."

- (h) If after submitting a notice, the person submitting the notice determines that the notice includes an error, that person shall timely correct the error through the amendment procedures set forth at N.J.A.C. 7:27- 30.20. A generator is not relieved of this requirement, even if the credits covered by a Notice of Generation have been verified and the error was not detected by the verifier.

7:27-30.19 Submission of notices

- (a) A person submitting a notice pursuant to this subchapter shall submit the notice on paper to the registry at the address given at N.J.A.C. 7:27- 30.8(b). The person shall at the same time also make all other submittals required in this section.
- (b) A person who submits a Notice of Generation, Notice of Intent to Use, or Notice of Use, and each amendment thereof, shall also submit a complete electronic copy of the notice or amendment to the registry at <http://www.omet.com>. A complete copy shall include all supporting documentation required pursuant to N.J.A.C. 7:27-30.25(b).
- (c) A user shall also submit on paper a copy of each Notice of Use to the Department at the applicable address(es) listed below:
 - 1. If the user source is located in Mercer, Middlesex, Monmouth, Ocean, or Union County:

Department of Environmental Protection
Central Regional Office
Air and Environmental Quality Compliance & Enforcement
Horizon Center, PO Box 407
Robbinsville, NJ 08625-0407
 - 2. If the user source is located in Bergen, Essex, or Hudson County:

Department of Environmental Protection
Metropolitan Regional Office
Air and Environmental Quality Compliance & Enforcement
2 Babcock Place
West Orange, NJ 07052-5504

3. If the user source is located in Hunterdon, Morris, Passaic, Somerset, Sussex, or Warren County:

Department of Environmental Protection
Northern Regional Office
Air and Environmental Quality Compliance & Enforcement
1259 Route 46 East, Building 2
Parsippany-Troy Hills, NJ 07054-4191

4. If the user source is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, or Salem County:

Department of Environmental Protection
Southern Regional Office
Air and Environmental Quality Compliance & Enforcement
One Port Center
2 Riverside Drive, Suite 201
Camden, NJ 08102

*[(d)] A user who is submitting a copy of a Notice of Use to the Department in accordance with (c) above shall submit, with the Notice of Use, a copy of the following documents:

1. A copy of the Notice of Intent to Use;
2. For each credit that was not generated by the user, a copy of the Notice of Transfer that conveyed that credit to the user; and
3. For each batch and partial batch of DER credits that was used, copy of the documents required to be provided to a transferee pursuant to N.J.A.C. 7:27-30.9(b)]*.

[(e)] **[(d)]** A permittee who generates DER credits through a mobile source **[emission reduction]*** **generation*** strategy shall additionally submit the Notice of Generation to the following:

1. To the New Jersey Department of Transportation at the following address:

Transportation Systems Planning
Department of Transportation
1035 Parkway Avenue
Main Office Building
PO Box 600
Trenton, NJ 08625-0600
Attn: Mobile Source Credit Generation

2. And to the following, as applicable:

- i. If the generator source is located in Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union

County, or Warren, to the executive director of the North Jersey Transportation Planning Authority (NJTPA) at the following address:
North Jersey Transportation Planning Authority (NJTPA)
One Newark Center, 17th Floor
Newark, NJ 07102

- ii. If the user source is located in Burlington, Camden, Gloucester, or Mercer County, to the executive director of the Delaware Valley Regional Planning Commission (DVRPC) at the following address:
Delaware Valley Regional Planning Commission (DVRPC)
Bourse Building
111 South Independence Mall East
Philadelphia, PA 19106
- iii. If the user source is located in Atlantic, Cape May, Cumberland, or Salem County, to the executive director of the South Jersey Transportation Planning Organization (SJTPO) at the following address:
South Jersey Transportation Planning Organization (SJTPO)
18 N. East Avenue
Vineland, NJ 08360

[(f)] ***(e)*** A permittee who generates DER credits through conversion of emission offsets to DER credits pursuant to N.J.A.C. 7:27-30.27(a) shall additionally submit the Notice of Generation to the emission offset bank at the address given at N.J.A.C. 7:27-18.8(a).

[(g)] ***(f)*** A permittee who intends to use DER credits to meet emission offset requirements shall additionally submit the Notice of Intent to Use to the address listed in N.J.A.C. 7:27-18.8(a).

[(h)] ***(g)*** If a use entails an increase in the actual emissions of any air contaminant (including, but not limited to, any "permit insurance" use listed at N.J.A.C. 7:27-30.14(d) ***[use]***), ***and if submission of a Notice of Intent to Use is required pursuant to N.J.A.C. 7:27-30.15,*** the permittee shall additionally:

- 1. At least seven days before the use period commences, submit a complete Notice of Intent to Use as a seven-day-notice, pursuant to N.J.A.C. 7:27-8.20(b)3 or 22.22(d)2, as applicable, to the following address:
Department of Environmental Protection
Air Quality Regulation Program
PO Box 027
Trenton, New Jersey 08625-0027
Attn: OMET/Seven-day-notice
- 2. If the user source is subject to the preconstruction permit requirements at N.J.A.C. 7:27-8, submit the service fee required for a seven-day-notice change at N.J.A.C. 7:27-8.6 to the address given at N.J.A.C. 7:27-8.6(g).

[(i)] ***(h)*** At least 30 days before the use period commences, if the user source is located within 100 kilometers of Edwin B. Forsythe National Wildlife Refuge ***[(see Appendix C for a delineation of this area)]***, the user shall additionally submit the Notice of Intent to Use to the Federal Land Manager*. **For the convenience of persons submitting notices, a delineation of this area may be found in Appendix C; however if there is a discrepancy between the size or location of this area given in Appendix C and the size or location given for this area in the Federal Register, the Federal Register shall take precedence. The notice shall be submitted to the Federal Land Manager*** at the following address:

Chief

Air Quality Branch

United States Fish and Wildlife Service

PO Box 25287

Lakewood, Colorado 80225

7:27-30.20 Amendment of notices

- (a) A person who has submitted a Notice to the registry may subsequently submit to the registry an amendment to the notice for the following purposes:
1. To correct an error in the notice; or
 2. To reflect a material change in any of the information, statements or certification in the notice or in any of the supporting documentation included with the notice.
- (b) An amendment shall include specification of the notice being amended, the information being amended, the corrected or changed information, an explanation of why it is appropriate to change this information, and the same certification as is required for the notice being amended.
- (c) Notwithstanding (a) above, none of the following may be amended:
1. For any notice, the ***[identity of the person who is submitting the notice (for example, for a Notice of Generation, the generator)]*** ***name of the person (i.e., generator, transferor, transferee, verifier, user, or retiree as applicable) except in the following case:**
 - i. **The person has legally changed its name; or it has merged into or been consolidated with another entity, such that the successor entity is known by a different name; and**
 - ii. **The renamed person or successor entity documents to the Department its assumption of all liability for the notice and the information set forth therein***;

2. For a Notice of Generation, the generator source(s) and the dates of the generation period;
3. For a Notice of Intent to Use, the following:
 - i. For any use, the user source(s); the first day of the use period; the maximum number of DER credits that may be used during the use period, both for the ozone season or during the use period as a whole; and the specific DER credits being held for the use (identified by their serial numbers); and
 - ii. For a permit insurance use, the last day of the use period, and the maximum emission rate (that is, the ceiling rate); and
4. For a Notice of Retirement, the number of credits retired (this number may neither be increased nor decreased).

7:27-30.21 Geographic scope of trading

- (a) A VOC or NO_x credit generated in New Jersey may be used anywhere in New Jersey.
- (b) A DER credit generated outside New Jersey may be used in New Jersey only if:
 1. The air pollution control agency of the state where the generator source is located is duly authorized to enter into a written agreement with the Department pertaining to interstate trading of credits;
 2. The Department and the authorized air pollution control agency of the other state have entered into a written agreement that addresses the items listed in (c) below; and
 3. The generator source is located as follows:
 - i. For a NO_x credit, the generator source is located either to the west and/or south of New Jersey or in the same nonattainment area as the user source; or
 - ii. For a VOC credit, the generator source and the user source are located in the same nonattainment area.
- (c) Any written agreement authorizing interstate trading of DER credits shall address the following:
 1. Interstate credit tracking procedures that ensure that the Department has reliable access, at a minimum, to information pertaining to the following:
 - i. Each use in another state of a DER credit generated in New Jersey; and

- ii. The generation in another state of a DER credit used in New Jersey;
- 2. If the other state lies south and/or west of New Jersey, concurrence that no DER credits generated in New Jersey may be used in the other state, unless the generator source and the user source are located in the same interstate nonattainment area; *[and]*
- 3. Provision that, upon the Department's request, the other state's air pollution control agency will provide the Department with all information and documentation required to be submitted to that agency for use in that state of a DER credit generated in New Jersey, or pertaining to generation in that state of a DER credit used (or to be used) in New Jersey *; and
- **4. Consistency with applicable federal laws, rules, and policies. The Department shall not enter into any agreement for interstate trading unless the agreement satisfies all applicable requirements established by the EPA for interstate DER trading agreements*.**
- (d) A written agreement authorizing interstate trading of DER credits may include provisions authorizing credit verifications performed under the auspices of the other state to be recognized in New Jersey. This would relieve any person using a credit in New Jersey that has been verified under the other state's procedures from the requirement to also have the credit verified, pursuant to N.J.A.C. 7:27-30.10, by a New Jersey verifier. The Department will not, however, enter into an agreement with another state that includes such a provision unless the Department is satisfied that the other state's verification procedures are substantially equivalent to New Jersey's.

7:27-30.22 Recordkeeping

- (a) For each batch of DER credits generated, the generator shall retain the following records until five years after the last Notice of Use or Notice of Retirement is submitted to the registry, reflecting that all DER credits in the batch (not including any that have been canceled or found to be invalid) have been used or voluntarily retired; the generator shall provide such records to the Department within 15 days after receiving a request from the Department:
 - 1. The Notice of Generation and any amendment thereto; and
 - 2. All data and other records relevant to documenting the generation of the DER credits, as required pursuant to N.J.A.C. 7:27- 30.25(c); and
 - 3. Any Notice of Invalidation for a credit in the batch.

- (b) For each DER credit used, the user shall retain the following records until five years after the end of the use period, and shall provide such records to the Department within 15 days after receiving a request from the Department:
 - 1. The Notice of Generation, the Notice of Intent to Use, the Notice(s) of Verification, each Notice of Transfer which documents that the credits used were conveyed to the user, the Notice of Use, and any amendments to any of these notices;
 - 2. All data and other records relevant to documenting the generation and use of the DER credit(s), as required pursuant to N.J.A.C. 7:27-30.25(c); and
 - 3. If applicable, any notice that a credit that was used was subsequently canceled, or that the EPA or the Department has found a DER credit used by the user to be invalid; together with the record of replacement of such credits pursuant to N.J.A.C. 7:27-30.12(k).
- (c) If the generator source or user source is a stationary source, the generator or user shall retain at the facility where the generator source or user source is located the records required pursuant to (a) or (b) above.
- (d) Within 15 days after receiving a request from the Department, a generator, user or verifier shall submit to the Department information which the Department finds reasonably necessary to determine if the generation, verification, proposed use, or use of DER credits complies with this chapter and all applicable State and federal laws and regulations. This information includes, but is not limited to, copies of any notice required to be submitted to the registry under this subchapter, all supporting documentation required by the quantification protocol used or by N.J.A.C. 7:27-30.25.
- (e) The operator of the registry shall retain records of any notifications provided to users pursuant to N.J.A.C. 7:27-30.8(h) until five years after all DER credits in any affected batch (that are not canceled or found to be invalid) are used or voluntarily retired.

7:27-30.23 Public availability

- (a) All information submitted to the Department or the registry under this subchapter and any supporting documentation required to be retained by a generator or user pursuant to N.J.A.C. 7:27-30.25 is a public record under N.J.S.A. 47:1A-2. To inspect, copy or obtain a copy of any public record held by the registry, a person shall submit a request to the registry at the address listed in N.J.A.C. 7:27-30.8(b). To inspect, copy or obtain a copy of any public record held by the Department, a person shall submit a request to:
 - Department of Environmental Protection
 - Office of Legal Affairs
 - Attention: Public Records Requests
 - 401 East State Street
 - PO Box 402

Trenton, New Jersey 08625-0402

- (b) A generator or user shall make all notices and amendments thereto, as well as any required supporting documentation, available for inspection to any person who requests it.

7:27-30.24 Standards for quantification protocols

- (a) Each generator or user shall use a quantification protocol that conforms with this section and content requirements for quantification protocols at N.J.A.C. 7:27-30.25. A generator or user shall follow the protocol to perform the quantifications required for a Notice of Generation, a Notice of Intent to Use, or a Notice of Use. The generator or user shall demonstrate conformance with the protocol to show that the number of DER credits generated or needed for compliance has been properly calculated.
- (b) A generator shall use a given protocol only if it applies to the generator source and to the specific ***generation*** strategy implemented to reduce emissions. A user shall use a given protocol only if it applies to the user source and to the specific use.
- (c) A quantification protocol shall not be found acceptable by the Department or a verifier unless:
1. The methods and guidance it sets forth conform with all applicable guidance issued by the EPA. If applicable EPA-approved measurement, testing and monitoring methods are available, the protocol shall specify that these methods shall be used;
 2. The method it prescribes for calculating the number of DER credits generated or the number of DER credits needed for compliance has sufficient detail so as to enable the Department, a verifier, or the EPA to evaluate the validity of the calculation; ***and***
 3. The protocol requires that the data on which each calculation is based are the most representative, accurate, current, and reliable data available. ***[If a generator or user has actual emissions data available, the protocol shall specify that a generator or user shall use this data in the calculation, as applicable, rather than imputed or estimated amounts; and] *Therefore, for emissions data:**

i.* If a generator or user ***[has] *would have*** actual emissions data available, the protocol shall specify that a generator or user shall use this data in the calculation, as applicable, rather than imputed or estimated amounts; ***and***

[4.]* ii. For a stationary source, ***the Department has prepared guidance to assist in selecting*** the technique(s) ***to be*** required by the protocol to measure and quantify actual emissions ***[shall be selected in accordance with N.J.A.C. 7:27-30.26]*. *This guidance document is entitled “Hierarchies of Quantification Techniques,” and a copy of this guidance document**

may be obtained in accordance with (j) below. This guidance may be used to help select the technique(s) to be used for measuring and quantifying actual emissions. However, following this guidance will not necessarily, in all cases, lead to identifying the technique(s) which are the most accurate and reliable technique(s) available. In such a case, the guidance shall not be followed, and the technique(s) which are the most accurate and reliable technique(s) available shall be selected for inclusion in the protocol.*

- (d) If the EPA has approved a quantification protocol that is applicable and that meets the requirements of N.J.A.C. 7:27-30.25, the generator or user shall use:
 - 1. The EPA-approved protocol; or
 - 2. An alternate quantification protocol that deviates from the EPA- approved protocol, but meets the requirements of N.J.A.C. 7:27-30.25 and has been approved by EPA prior to the generator's submission of the Notice of Generation or the user's submission of the Notice of Intent to Use.
- (e) If the EPA has approved a quantification protocol that is applicable, but does not address all the requirements of N.J.A.C. 7:27-30.25, the generator or user shall use a quantification protocol that both meets the requirements of N.J.A.C. 7:27-30.25 and also incorporates one of the following:
 - 1. The EPA-approved protocol; or
 - 2. Alternate elements that deviate from the EPA-approved quantification protocol, but that have been approved by EPA prior to the generator's submission of the Notice of Generation or the user's submission of the Notice of Intent to Use.
- (f) If the EPA has not approved a quantification protocol that is applicable, the generator or user shall use:
 - 1. A protocol approved by the Department and made available pursuant to (h) below; or
 - 2. Another protocol that meets the requirements of N.J.A.C. 7:27- 30.25. The generator or user need not obtain EPA's or the Department's approval before using such a protocol.
- (g) In developing a generation protocol for emission reductions due to implementation of energy efficiency measures, a generator or user is encouraged to refer to and utilize, as applicable, the guidance document "Measurement Protocol for Commercial, Industrial and Residential Facilities," issued by New Jersey's Board of Public Utilities (BPU) on April 28, 1993. A copy of the document may be obtained from:

New Jersey Board of Public Utilities

2 Gateway Center
Newark, New Jersey 07102

- (h) Before approving an emissions quantification protocol for any source or class of sources, the Department shall provide an opportunity, announced through a public notice in the New Jersey Register, for comment on the proposed protocol. Once the Department approves any emissions quantification protocol, it will make the protocol publicly available for use by owners or operators of generator sources or user sources to which the protocol applies. Copies of approved protocols may be requested *[from:

Office of Air Quality Management
Department of Environmental Protection
PO Box 418
401 East State Street
Trenton, NJ 08625-0418]* ***as set forth in (j) below.***

- (i) No generator or user may use a quantification protocol, unless they have available and are willing to provide in full the information required pursuant to a quantification protocol that meets the requirements of this section and N.J.A.C. 7:27-30.25.

***(j) A copy of an approved emissions quantification protocol or of the guidance document entitled “Hierarchies of Quantification Techniques” may be obtained as follows:**

1. A copy may be downloaded from the Department’s website at <http://www.state.nj.us/dep/aqm/omet>, or

2. A copy may be requested from:
Department of Environmental Protection
Office of Air Quality Management
PO Box 418
Trenton, New Jersey 08625-0418
Attention: OMET Program
Telephone: (609) 777-1345*

7:27-30.25 Contents of quantification protocols

- (a) A quantification protocol shall set forth the following:
1. The *[emission]* ***emissions*** source, or class of emission sources, to which the protocol applies. Each class shall be described with sufficient detail and specificity so as to enable a person to determine unambiguously whether or not any given source belongs to the class;
 2. The generation *[or use]* strategy(s) ***or use(s)*** to which the protocol applies **Each generation strategy and each use shall be described with sufficient detail**

and specificity so as to enable a person to determine unambiguously whether or not the protocol applies to any given generation strategy or use*;

3. The formula(s) to be used to calculate the number of DER credits that have been generated during the generation period; the number of DER credits that need to be held when a Notice of Intent to Use is submitted; the number of DER credits used during a use period; or the quantity of actual emission increases during the use period, as applicable;
4. The method(s) to be used to derive each term used in the formula(s) specified pursuant to (a)3 above (for example, the method to be used for determining "baseline emissions"), including, but not limited to:
 - i. Any test method(s) or other technique(s) to be used for determining actual emission increases or decreases, together with specification of the parameters to be measured, the measurement methods to be used (for example, specific methods for continuous emissions monitoring, stack testing, or predictive emissions monitoring) and the rationale for requiring use of these specific methods;
 - ii. For a stationary or mobile source, the method for establishing its activity level, including the measurement methods to be used to collect the activity level data (such as monitoring of fuel use or hours of operation), and the rationale for requiring use of these methods; and
 - iii. For a product, the methods for determining the quantity of product distributed, stored, or used in New Jersey, and the rationale for requiring use of these methods;
5. For a generation protocol, with respect the "economic output" term in the formula, one of the following:
 - i. The unit of economic output to be used in the calculation, together with an explanation of why this is an appropriate unit, specification of the measurement methods to be used to collect the economic output data (such as monitoring of the BTU's of heat energy supplied), and the rationale for requiring reliance on these methods; or
 - ii. The methods a generator shall use to develop an appropriate unit of economic output for the generator source;
6. The method(s) the generator or user shall use to document the derivation of each term used in the formula(s) given pursuant to (a)3 above, including, but not limited to, the procedures to be used to compile, summarize, analyze and report emissions data, activity level data, and economic output data;

7. For the air contaminant on which the credits are based (for example, for VOC, if the credits generated or used are VOC DERs), the methods to be used for determining:
 - i. Whether the credit generation or credit use has resulted in an increase in emissions of that air contaminant, from other source(s) at the facility or off-site, including, but not limited to, increases due to a shifting of production to or an increase in activity of the other source; and
 - ii. If so, the method(s) to be used for determining the quantity of such emissions increase;
 8. The methods for determining the design margin. Such methods shall take into account historical compliance margins for the parameter in question, reflecting the individual generator's or user's past performance in meeting the requirement. In the case of a new requirement, the methods may be based either on the individual generator's or user's past performance in meeting past requirements or on an industry average compliance level;
 9. The methods to be used for determining if the generation or use of DER credits has resulted in an increase in the actual emissions of any other air contaminant, including any HAP, either from the generator or user source, from other source(s) at the facility, and/or from source(s) off-site; and if so, the method(s) to be used for determining the quantity of the increase;
 10. For DER credit generation, the methods to be used for determining the following:
 - i. The quantity of product distributed, stored or used in New Jersey, pursuant to N.J.A.C. 7:27-30.4(a)3; and
 - ii. The quantity of recycled materials that was sold for use as a consumer or commercial product in New Jersey, or were conveyed to a manufacturer in New Jersey for use as a raw material in the manufacturer's production process, pursuant to N.J.A.C. 7:27-30.4(a)5;
 11. Any emission factors or constants to be used, together with either a citation of the source of the factors or constants or an explanation of how they were derived; and
 12. Assumptions that a generator or user shall or may make in performing any of the calculations.
- (b) A quantification protocol shall specify the supporting documentation that a generator or user (as applicable) shall provide with a notice, as an integral part thereof. This documentation shall include:
1. Explanation of the following:

- i. The assumptions made in the calculations, other than those required by the protocol to be used pursuant to (a)12 above;
 - ii. If the protocol allows the use of more than one method for monitoring, testing, or otherwise determining variables such as the quantity of emissions, activity level, or economic output), an explanation of why the method used was selected;
 - iii. The steps taken to minimize uncertainty in the methods used and the data on which the calculations are based, including a description of steps taken to assure precision and avoid bias; or if uncertainty cannot be minimized, an explanation of how the calculation method has been modified to account for imprecision and/or bias;
 - iv. If the generation or use of credits has resulted in an increase, from another source at the facility or elsewhere, in emissions of the same type of air contaminant as that on which the credits are based (for example, VOC emissions, if the credits generated or used are VOC DERs), an explanation of the causes of the increase in emissions;
 - v. For a generation protocol, if the user determined the unit of economic output to be used in the calculations pursuant to (a)5ii, an explanation of why it is an appropriate unit, the measurement methods used to collect the economic output data (such as monitoring of the BTU's of heat energy supplied), and the rationale for reliance on these methods;
- 2. Any calculations performed, including for the determination of:
 - i. The number of credits generated, the number of DER credits that need to be held when a Notice of Intent to Use is submitted, or the number of DER credits that were used during a use period;
 - ii. The quantity (if any) of the actual emissions increase of any HAP, including the quantity from the generator or user source, from other source(s) at the facility, and/or from source(s) off-site: and
 - iii. The quantity of the increase or decrease in actual emissions of VOC or NO_x;
- 3. A listing of all State and Federal air quality regulations, orders and permits that apply (for generation protocols) to the generator source or (for use protocols) to the user source, and any emission limits set forth therein for the following:
 - i. The air contaminant (for example, VOC or NO_x) on which the credits being generated or used are based; and
 - ii. Any HAP; *[and]*

4. The data reports and summaries which set forth the data relied on in the calculations, together with adequate labeling and explanation of the data reports and summaries so as to enable proper interpretation***[.]*** **;** **and**

5. The following demonstrations:

- i. If a generator or user would have actual emissions data available, but the protocol specifies that a generator or user shall use another method which does not utilize the actual emissions data, a demonstration that this other method results in a determination of emissions that is more representative, accurate, current, and reliable; and**
- ii. If the protocol specifies the use, for a stationary source, of a technique for measuring and quantifying actual emissions that is different from the techniques that would be selected for the source using the Department's "Hierarchies of Quantification Techniques" guidance document, a demonstration that this other technique is the most accurate and reliable technique available for measuring and quantifying actual emissions.***

- (c) A quantification protocol shall specify the data and other records relevant to documenting the quantification performed pursuant to N.J.A.C. 7:27-30.22(a) and (b) that, at a minimum, a generator or user shall retain. Such records will include, but not be limited to, the following data sets, where summary data reports are provided in the Notice of Generation, Notice of Intent to Use, or the Notice of Use:

1. Any emissions data relied on in the calculations described in (a) and (b) above;
2. For a stationary or mobile source, the data relied on to establish a generator source's or user source's activity level and hours of operation; and
3. For a product, the data collected to determine the quantity of product distributed, stored, or used in New Jersey; and
4. For a generation protocol, the data collected to establish the generator source's economic output.

- (d) A quantification protocol shall provide example calculations, based on the formulas and the requirements for calculation at N.J.A.C. 7:27-30.5 or 30.13.

7:27-30.26 *[Hierarchies of quantification techniques]*** **Reserved*****

- ***[(a)** This section sets forth the criteria that shall be used to determine, for a stationary source, the quantification technique(s) to be prescribed by a quantification protocol for determining the quantity of actual emission increases or decreases.

- (b) The specific technique included in a protocol for determining the quantity of VOC or NO_x emission increases or decreases from stationary sources shall be selected as follows:
1. If a Federal or State law, rule, permit, or order requires that the emissions source's emissions be monitored through a continuous emission monitoring system (CEMS), the determination shall be based on use of the CEMS data; and
 2. If the emissions source is not required to have a CEMS, the determination shall be based on one of the techniques listed below. The list is a hierarchy, in which the first listed technique is the most preferred, and the technique listed last, the least preferred. For a given emission source, or category of emission sources, a protocol shall use the first listed technique which is required to be used for the emissions source pursuant to its permit; except that if a generator or user is in fact using or prefers to use a higher-listed technique (that is, a more preferred technique) to determine the source's emissions, the higher-listed technique shall be used:
 - i. An alternative monitoring methodology set forth in an alternative monitoring plan approved by the Department pursuant to N.J.A.C. 7:27- 19.18(b) or approved by the EPA;
 - ii. Source emission testing performed on the user or generator source, as applicable, in accordance with a protocol approved by the Department pursuant to N.J.A.C. 7:27B;
 - iii. A material balance;
 - iv. Source emission testing or other emission measurements conducted on similar emissions sources;
 - v. Calculation using emission factors that differ from AP-42, which are designed to estimate emissions from the particular emissions source more accurately than AP-42;
 - vi. Calculation using EPA emission factors from AP-42; and
 - vii. For area sources only, an emission estimation model approved or published by the EPA.
- (c) The specific technique included in a protocol for determining the quantity of GHG emission increases or decreases from stationary sources shall be selected as follows:
1. If a Federal or State law, rule, permit, or order requires that the emissions source's emissions be monitored through a continuous emission monitoring system (CEMS), determination shall be based on use of the CEMS data; and

2. If the GHG is an HFC, SF sub6 , CH sub4 , or CO sub2 emitted from fuel combustion including fuel combustion associated with production of electricity used, and if the emissions source is not required to have a CEMS, the determination shall be based on one of the techniques listed below. The list is a hierarchy, in which the first listed technique is the most preferred, and the technique listed last, the least preferred. For a given emission source, or category of emission sources, a protocol shall use the first listed technique which is required to be used for the emissions source pursuant to its permit; except that if a generator or user is in fact using or prefers to use a higher-listed technique (that is, a more preferred technique) to determine the source's emissions, the higher-listed technique below shall be used:
 - i. Mass/material balance, which, in the case of CO₂ emitted from fuel combustion or associated with electricity use, shall be a balance of fuel and energy use, as converted to CO₂ emissions using the emission coefficients listed in Appendix D, incorporated herein by reference, and appropriate efficiencies of equipment;
 - ii. Recommended applicable emission factor described in Emissions Inventory Improvement Program (EIIP) Document Series Volume VIII, Estimating Greenhouse Gas Emissions (EPA 454R-97-004a-g), as amended and supplemented, incorporated herein by reference; a copy of this methodology may be obtained from the EPA website at www.epa.gov/ttn/chief/eiip/eiip--ghg.htm or by requesting a copy from the Department at the following address:

Department of Environmental Protection
Office of Air Quality Management
PO Box 418
Trenton, New Jersey 08625-0418
 - iii. AP-42 emission factor;
 - iv. Predictive emissions monitoring;
 - v. Manufacturer's estimate or data;
 - vi. Industry council or organization emission factor;
 - vii. Departmentally approved stack testing performed during the reporting year;
 - viii. Departmentally approved stack testing performed during the prior year;
 - ix. Stack testing not approved or supervised by the Department;
 - x. Permitted allowable emission or other default value;
 - xi. Engineering judgment/factor; and

3. If the GHG is a PFC, N sub2 O, CH sub4 produced as a by-product of combustion, or CO sub2 emitted from a source other than fuel combustion, and if the emissions source is not required to have a CEMS, the determination shall be based on one of the techniques listed below. The list is a hierarchy in which the first listed technique is the most preferred, and the technique listed last, the least preferred. For a given emission source, or category of emission sources, a protocol shall use the first listed technique which is required to be used for the emissions source pursuant to its permit; except that if a generator or user is in fact using or prefers to use a higher-listed technique (that is, a more preferred technique) to determine the source's emissions, the higher-listed technique shall be used:
 - i. Recommended applicable emission factor described in most recent USEPA/STAPPA/ALAPCO Emissions Inventory Improvement Program methodology for greenhouse gases incorporated herein by reference; a copy of this methodology may be obtained from the EPA website at www.epa.gov/ttn/chief/eiip/eiip--ghg.htm;
 - ii. AP-42 emission factor;
 - iii. Predictive emissions monitoring;
 - iv. Mass/material balance, coupled as necessary with appropriate emission factors and appropriate efficiencies of equipment;
 - v. Manufacturer's estimate or data;
 - vi. Industry council or organization emission factor;
 - vii. Departmentally approved stack testing performed during the reporting year;
 - viii. Departmentally approved stack testing performed during the prior year;
 - ix. Stack testing not approved or supervised by the Department;
 - x. Permitted allowable emission or other default value;
 - xi. Engineering judgment/factor.]*

7:27-30.27 Interface with other trading programs

- (a) Allowances allocated under the NO_x Budget Program may be converted to NO_x credits, in accordance with N.J.A.C. 7:27-31.6(a).
- (b) Emission reduction credits generated under the Emission Offset Program may be converted to NO_x or VOC credits, in accordance with N.J.A.C. 7:27-18.11.

- (c) Use of DER credits that are based on the conversion of NO_x Budget allowances or emission reduction credits generated under the Emission Offset Program is subject to the geographic constraints set forth at N.J.A.C. 7:27- 30.21 rather than to any corresponding geographic requirements in NO_x Budget Program or the Emission Offset Program.

7:27-30.28 Compliance responsibilities

The generator is responsible for ensuring that it has generated DER credits in accordance with this subchapter. The verifier is responsible for making the Notice of Verification true, accurate and complete. The user is responsible for ensuring that its use of DERs complies with this subchapter. In any enforcement action, the generator, verifier and user bear the burden of proof on each of their respective responsibilities.

7:27-30.29 Invalidation and cancellation of DER credits

- (a) If the Department or the EPA determines at any time that a DER credit does not satisfy all of the applicable requirements of this subchapter, the Department or the EPA may find the credit invalid. The Department or the EPA shall effect such a finding by notifying the registry and the holder of the DER credit that the DER credit is invalid.
- (b) If a generator decides, for any reason, to reduce the number of credits claimed for a batch, the generator shall, pursuant to N.J.A.C. 7:27- 30.20, submit an amendment to a Notice of Generation requesting that a specified number of credits in the batch be canceled.
- (c) Within one business day of receiving a notice that one or more DER credits are invalid, and within one business day of receiving an amendment requesting that one or more DER credits be canceled, the registry operator shall designate in the registry, by serial number, each DER credit that is invalid or canceled. If a part of a batch of DER credits has been found invalid or been canceled, the registry operator shall designate those credits in the batch with the higher serial numbers as being invalid or canceled.
- (d) A generator, holder, or user of a DER credit, who is aggrieved with respect to a finding by the Department that a credit is invalid, may request an adjudicatory hearing, pursuant to N.J.A.C. 7:27-1.32.
- (e) No credit which has been designated as invalid or as canceled may be transferred, verified, retired, or used.

7:27-30.30 Penalties

A person who fails to comply with any provision of this subchapter shall be subject to civil administrative penalties in accordance with N.J.A.C. 7:27A- 3 and applicable criminal penalties including, but not limited to, those set forth at N.J.S.A. 2C:28 and N.J.S.A. 26:2C-19(f)1 and 2. If

there is more than one owner or operator of an emissions source, all owners and operators are jointly and severally liable for such civil administrative penalties.

***[APPENDIX A**
Emissions Included in Emissions Inventory
as of August 2, 1996

The emissions inventory which the State has submitted to the EPA as a revision to the State Implementation Plan includes the following emissions:

1. Emissions from major point sources. A major point source is a facility with the potential to emit at least 10 tons of VOC per year; 25 tons of NO_x per year; or 100 tons of CO per year. VOC or NO_x emissions from a source operation at a major point source are included in the inventory if the emission statement submitted pursuant to N.J.A.C. 7:27-21 contains VOC or NO_x emissions (as applicable) for that source operation.

2. Emissions from minor point sources and area sources. Minor point sources are industrial sources with the potential to emit less than 10 tons of VOCs per year, less than 25 tons of NO_x per year, and less than 100 tons of CO per year. Area sources are source categories with emissions that are not readily controllable at a single point or set of points; for example, the use of consumer products results in VOC emissions at a multitude of points that could not readily be controlled individually. Emissions from a minor point source or area source are included in the inventory if the source is within one of the following categories:

Industrial Fuel Combustion

- Anthracite coal
- Bituminous coal
- Distillate oil
- Residual oil
- Natural gas
- Liquefied petroleum gas (LPG)

Commercial Fuel Combustion

- Bituminous coal
- Distillate Oil
- Residual Oil
- Natural Gas
- Liquefied petroleum gas (LPG)

Residential Fuel Combustion

- Anthracite coal
- Distillate oil
- Natural gas
- Liquefied petroleum gas (LPG)
- Wood
- Kerosene

Industrial Solvent Use

- Architectural coatings

Autobody refinishing

Traffic Paints

Degreasing

Dry cleaning

Graphic arts

Bioprocesses

Bakeries

Breweries

Distilleries

Wineries

Surface Coating

Factory finished wood

Furniture and fixtures

Metal containers

Sheet, strip and coil coating

Machinery and equipment

Appliances

Electrical insulation

New automobiles

Other transportation equipment

Marine vessels

Other products

High-performance maintenance coatings

Other special purpose coatings

Consumer/Commercial Solvent Use

Pesticides (Lawn, agricultural and golf courses)

Consumer products

Asphalt Application

Emulsified asphalt

Cutback asphalt

Roofing asphalt

Gasoline Handling

Aircraft refueling

Truck unloading (at gas stations)

Motor vehicle refueling

Tank breathing (gas stations)

Transit by rail car

Transit by truck

Marine Vessel Transport of VOCs

Loading, ballasting and transit of crude oil

- Loading, ballasting and transit of gasoline
- Loading and transit of residual oil
- Loading and transit of distillate oil
- Loading and transit of jet fuel
- Loading and transit of kerosene

Waste Management

- Incineration (on-site, pathological and municipal)
- Landfills
- Industrial treatment works (ITWs)
- Publicly owned treatment works (POTWs)

Fires

- Agricultural field burning
- Wildfires
- Managed burning

Cigarette smoking

3. Highway mobile sources. The highway mobile source component of the emission inventory is an estimate of VOC, NO_x, and CO tailpipe emissions and VOC evaporative emissions from vehicles operating on public roadways. Emissions from such vehicles are included in the inventory.

4. Off-highway equipment and engine categories. The off-highway mobile source and equipment component of the emission inventory is an estimate of the VOC, NO_x and CO emissions from motorized vehicles and equipment that are not operated on public roadways. Emissions from such vehicles and equipment are included in the inventory if the source is within one of the following categories:

Agricultural Equipment

- Agricultural Mowers
- Agricultural Tractors
- Balers
- Combines
- Hydro Power Units
- Sprayers
- Swathers
- Tillers >5 HP
- 2-Wheel Tractors
- Other Agricultural Equipment

Aircraft Operations and Support

- Air taxi operations
- Commercial/Military aircraft operations
- General aviation

Aircraft support equipment
Terminal tractors

Construction Equipment

Asphalt Pavers
Bore/Drill Rigs
Cement and Mortar Mixers
Concrete Pavers
Concrete/Industrial Saws
Cranes
Crawler Tractors
Crushing/Proc. Equipment
Dumpers/Tenders
Excavators
Graders
Off-Highway Tractors
Off-Highway Trucks
Other Construction Equipment
Paving Equipment
Plate Compactors
Rollers
Rough Terrain Forklifts
Rubber Tired Dozers
Rubber Tired Loaders
Scrapers
Signal Boards
Skid Steer Loaders
Surfacing Equipment
Tampers/Rammers
Tractors/Loaders/Backhoes
Trenchers

Logging Equipment

Chainsaws >4 HP
Fellers/Bunchers
Shredders >5 HP
Skidders

Industrial Equipment

Aerial Lifts
Forklifts
Other General Industrial Equipment
Other Material Handling Equipment
Sweepers/Scrubbers

Lawn & Garden Equipment

- Chainsaws <4 HP
- Chippers/Stump Grinders
- Commercial Turf Equipment
- Front Mowers
- Lawn & Garden Tractors
- Lawn Mowers
- Leaf Blowers/Vacuums
- Other Lawn & Garden Equipment
- Rear Engine Riding Mowers
- Shredders <5 HP
- Snowblowers
- Tillers <5 HP
- Trimmers/Edgers/Brush Cutters
- Wood Splitters

Light Commercial Equipment

- Air Compressors <50 HP
- Gas Compressors <50 HP
- Generator Sets <50 HP
- Pressure Washers <50 HP
- Pumps <50 HP
- Welders <50 HP

Recreational Vehicles and Vessels

- All Terrain Vehicles (ATVs)
- Golf Carts
- Minibikes
- Off-Road Motorcycles
- Sailboat Auxiliary Inboard Engines
- Sailboat Auxiliary Outboard Engines
- Snowmobiles
- Specialty Vehicles Carts
- Vessels w/Inboard Engines
- Vessels w/Outboard Engines
- Vessels w/Stern drive Engines

Other Transportation Equipment

- Locomotives
- Marine vessels]*

APPENDIX *[B]* *A*

**Global Warming Potentials¹
(100 year time horizon)**

Gas	Global Warming Potential
Carbon dioxide (CO ₂)	1
Methane (CH ₄)	21
Nitrous oxide (N ₂ O)	310
HFC-23	11,700
HFC-125	2,800
HFC-134a	1,300
HFC-143a	3,800
HFC-152a	140
HFC-227ea	2,900
HFC-236fa	6,300
HFC-4310mee	1,300
CF ₄	6,500
C ₂ F ₆	9,200
C ₄ F ₁₀	7,000
C ₆ F ₁₄	7,400
SF ₆	23,900

¹ Source: *Climate Change 1995: The Science of Climate Change, Report prepared for IPCC by Working Group I, Intergovernmental Panel on Climate Change, Organization for Economic Co-Operation and Development, Paris, France.*

APPENDIX *[C]* *B*

Note: The material below has been excerpted from the “Timely and Appropriate (T&A) Enforcement Response to High Priority Violations (HPVs)” guidance document signed by Eric Schaeffer, Director of the Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance, United States Department of Environmental Protection, on December 22, 1998. A copy of the complete guidance document may be found on the EPA website at www.epa.gov/oeca/ore/aed or be requested from:

Air & Environmental Quality Compliance and Enforcement
Department of Environmental Protection
P.O. Box 422
401 East State Street, Floor 4
Trenton, NJ 08625-0422

II. Definition of High Priority Violations

When a violation is detected, the violation's characteristics shall be compared with the Definition of High Priority Violation given in Parts A and B below. To the extent that the violation fits one or more of the elements of the General High Priority Violation Criteria given in Part A or the High Priority Violation Matrix given in Part B, it shall be designated as a high priority violation and is subject to the Timely and Appropriate Section of this policy.

A. General HPV Criteria

The following criteria trigger HPV status. The criteria apply to the pollutant(s) of concern at major sources, (i.e., pollutant for which source is major) except where the criterion itself indicates otherwise (e.g., applies to a synthetic minor source). The determination of what is substantive/substantial shall be part of a case-by-case analysis/discussion by the EPA and the delegated agency.

1. Failure to obtain a PSD permit (and/or to install BACT), an NSR permit (and/or to install LAER or obtain offsets) and/or a permit for a major modification of either.
2. Violation of an air toxics requirement (i.e., NESHAP, MACT) that either results in excess emissions or violates operating parameter restrictions.
3. Violation by a synthetic minor of an emission limit or permit condition that affects the source's PSD, NSR or Title V status (i.e., fails to comply with permit restrictions that limit the source's potential emissions below the appropriate thresholds; refers only to pollutants for which the source is a synthetic minor. It is not necessary for a source's actual emissions to exceed the NSR/PSD/Title V thresholds.)
4. Violation of any substantive term of any local, state or federal order, consent decree or administrative order.

5. Substantial violation of the source's Title V certification obligations, e.g., failure to submit a certification.
 6. Substantial violation of the source's obligation to submit a Title V permit application. (i.e., failure to submit a permit application within sixty (60) days of the applicable deadline)
 7. Violations that involve testing, monitoring, record keeping or reporting that substantially interfere with enforcement or determining the source's compliance with applicable emission limits.
 8. A violation of an allowable emission limit detected during a reference method stack test.
 9. Clean Air Act (CAA) violations by chronic or recalcitrant* violators.
 10. Substantial violation of Clean Air Act Section 112(r) requirements (for permitting authorities that are not implementing agencies under Section 112(r) program, limited to source's failure to submit Section 112(r) risk management plan).
- * Chronic or recalcitrant violator refers to a source that may stay below the HPV threshold but continually violates requirements to the extent that it is mutually agreed by the Region and the delegated agency that the source should be bumped up into HPV status.

B. High Priority Violation Matrix

The matrix below contains specific criteria for assessing whether violations are high priority. The matrix is set out in six columns that identify: the violation, the means by which the violation was identified (method of detection), the applicable standard, the supplemental significance threshold, percentage in excess of the reference limit or standard and the time in excess of the reference limit or standard. A discussion of each of these elements of the matrix is set out below. Violations not on the High Priority Violation List may nonetheless be serious, but may not be initially subject to the provisions of this policy.

Violations and Method of Detection

The first column lists four types of violations addressed by the matrix. The second column identifies six methodologies for detecting the four types of violations listed in the first column. The following shows the four types of violations and the associated method(s) of detecting violations that are reflected in the first two columns of the matrix. Although the matrix provides specific detection methods for violations, nothing in this policy is intended to limit the agency in using other credible evidence to document a violation.

- I. Violation of Allowable Emissions Limitations
 - A. Reference Method Stack Testing or
 - B. Coatings Analysis, Fuel Samples or Other Process Material Sampling

- II. Violation of Parameter Emissions Limitations
 - A. Continuous/Periodic Parameter Monitoring
- III. Violation of Applicable Standards (non-opacity)
 - A. Continuous Emissions Monitoring (where the CEM is certified under federal performance specifications)
- IV. Violation of Applicable Standards (opacity)
 - A. Continuous Opacity Monitoring or
 - B. Method 9 Visual Emissions Readings

Standards

This column identifies the standard(s) for which a violation is being assessed.

Supplemental Significance Threshold

This column provides a supplemental significance threshold (SST) that is to be considered along with the other matrix factors to determine high priority violations. The SST is intended only as a surrogate threshold against which a violation can be judged and obviates the situation that would occur if an emissions limitation was high enough that a less than 15% excursion of the applicable requirement would result in significant environmental impact. The SST is consistent with the level at which a source would be required to obtain a PSD permit for a major modification for the applicable criteria pollutant(s), expressed as an hourly emission rate. The use of an SST is not intended in and of itself to imply that a facility must obtain a PSD permit.

Percent in Excess of Limit/Parameter

This column is the yardstick by which a violation is judged to be a high priority violation. In some cases (i.e., where the word "FOR" connects this column with the last column), the percent in excess of the limit is paired with a time element. To determine the level of excess emissions for which a violation is considered high priority, multiply the applicable standard by the applicable percentage from this column.

Percent of Time in Excess of the Applicable Standard

The percent of time in excess of the applicable standard is based on the operating time of the facility during the reporting period in which the violation was discovered.

Please refer to the May 15, 2000 edition of the New Jersey Register for the official text of this adoption.

VIOLATION	METHOD OF DETECTION	STANDARD	SUPPLEMENTAL SIGNIFICANT THRESHOLD ¹	% IN EXCESS OF REFERENCE LIMIT/PARAMETER		% OF TIME IN EXCESS OF REFERENCE LIMIT
Violation of Allowable Emissions Limitations	Stack Testing	Any applicable requirement		Any violation of the applicable standard		N/A
	Coatings analysis, fuel samples, other process materials sampling or raw/process materials usage reports	Any applicable requirement	CO 23 lb/hr NOx 9 lb/hr SO2 9 lb/hr VOC 9 lb/hr PM 6 lb/hr PM10 3 lb/hr	>15% of the applicable emission limitation or the supplemental significant threshold (whichever is more stringent)		N/A
Violation of parameter limits where the parameter is a direct surrogate for an emissions limitation	Continuous/Periodic Parameter Monitoring (includes indicators of control device performance)	Any applicable requirement		>5% of the applicable parameter limit	FOR	>3% of the operating time during the reporting period
					OR	any exceedance of the parameter limit for >50% of the operating time during the reporting period ³
Violation of applicable non-opacity standard	Continuous Emissions Monitoring (where the CEM is certified under federal performance specifications)	≤24 hour averaging period (for example, one hour or three hour blocks)	CO 23 lb/hr NOx 9 lb/hr SO2 9 lb/hr VOC 9 lb/hr	15% of the applicable standard or, the supplemental significant threshold, (whichever is more stringent)	FOR	>5% of the operating time during the reporting period ^{4 6}
					OR	any exceedance of the reference limit for >50% of the operating time during the reporting period ³
	Continuous Emissions Monitoring (where the CEM is certified under federal performance specifications)	> 24 hour averaging period		Any violation of the applicable standard		N/A
Violation of applicable opacity standard ²	Continuous Opacity Monitoring	0-20% opacity		>5% opacity over the limit	FOR	>5% of the operating time during the reporting period ^{4 6}
	Method 9 VE Readings	>20% opacity		>10% opacity over the limit		
		>20% opacity		>50% over limit	AND	Any violation of SIP/NSPS limits ⁵
		>20% opacity		>25% over limit		

Table Footnotes:

- Supplemental Significant Threshold is based on PSD significant levels. The significant threshold value is the lb/hr emission rate at 8760 hours which would result in PSD review.
- Based on the applicable averaging period (e.g. 6-minute block averages).
- For the first reporting period. If exceedances occur for more than 25 % of the operating time during the first reporting period evaluated, and if such exceedances continue during the subsequent consecutive reporting period, the exceedances will be considered high priority violations for both reporting periods if the percent of time in excess exceeds 25% of the operating time during the second reporting period.
- For the first reporting period. If exceedances occur for more than 3% of the operating time during the first reporting period evaluated, and if such exceedances continue during the subsequent consecutive reporting period, the exceedances will be considered high priority violations for both reporting periods if the percent of time in excess exceeds 3% of the operating time during the second reporting period.
- Unless the state or local agency concludes that 1) the cause of the violation has been corrected within 30 days and the source has returned to compliance, or 2) the source was in compliance with an applicable mass limit at the time the Method 9 visual reading was taken.
- This would not include any federally approved exempt period (e.g., startup/shutdown/malfunction 40 CFR 60.11), since these would not be violations.

***[APPENDIX D
Emission Coefficients²**

**Table A
Emission Coefficients by Fuel Type**

Fuel Type	Pounds CO₂ per unit volume or mass (1 ton = 2000 pounds)	Pounds CO₂ per million BTU
Aviation gasoline	18.355 per gallon	152.717
Distillate fuel (#1, #2, #4 fuel oil & diesel)	22.384 per gallon	161.386
Jet fuel	21.439 per gallon	159.69
Kerosene	21.537 per gallon	159.535
Liquified petroleum gas (LPG)	12.200 per gallon	138.846
Motor gasoline	19.641 per gallon	157.041
Residual fuel (#6 fuel oil)	26.033 per gallon	173.906
Methane	116.376 per 1000 cubic feet	115.258
Flare gas	133.759 per 1000 cubic feet	120.721
Natural gas (pipeline)	120.593 per 1000 cubic feet	117.08
Propane	12.669 per gallon	139.178
Anthracite coal	4933.804 per ton ³	227.4
Bituminous coal	4921.862 per ton	205.3
Subbituminous coal	3723.952 per ton	212.7
Lignite	2733.857 per ton	215.4
Wood and wood waste ⁴	3814 per ton	221.943
Municipal solid waste ²	1999 per ton	199.854

²Source: DOE/EIA, Form EIA-1605 Voluntary Reporting of Greenhouse Gases, Instructions, 1997, Appendix B and Appendix C.

³Instead of the DOE/EIA coefficient, the coefficient given for anthracite coal for the “pounds CO₂ per unit mass” factor is derived from data provided in the STAPPA-ALAPCO-EPA report, “Emission Inventory Improvement Program, Vol. VIII, Chapter 1, “Methods for Estimating Carbon Dioxide Emissions from Combustion of Fossil Fuels,” Review Draft, ICF Inc., Washington, D.C., 1998.

⁴Net emissions likely to be less than direct emissions because all or part of the fuel is renewable; biofuels contain carbon that is part of the natural carbon cycle balance and will not add to atmospheric concentrations of CO₂.

Table B
Emission Coefficients by Energy Type

Energy Type	Pounds CO₂ per Megawatt hour (MWh)	Metric tons CO₂ per MWh
Electricity (U.S. average)	1291	0.586

]*

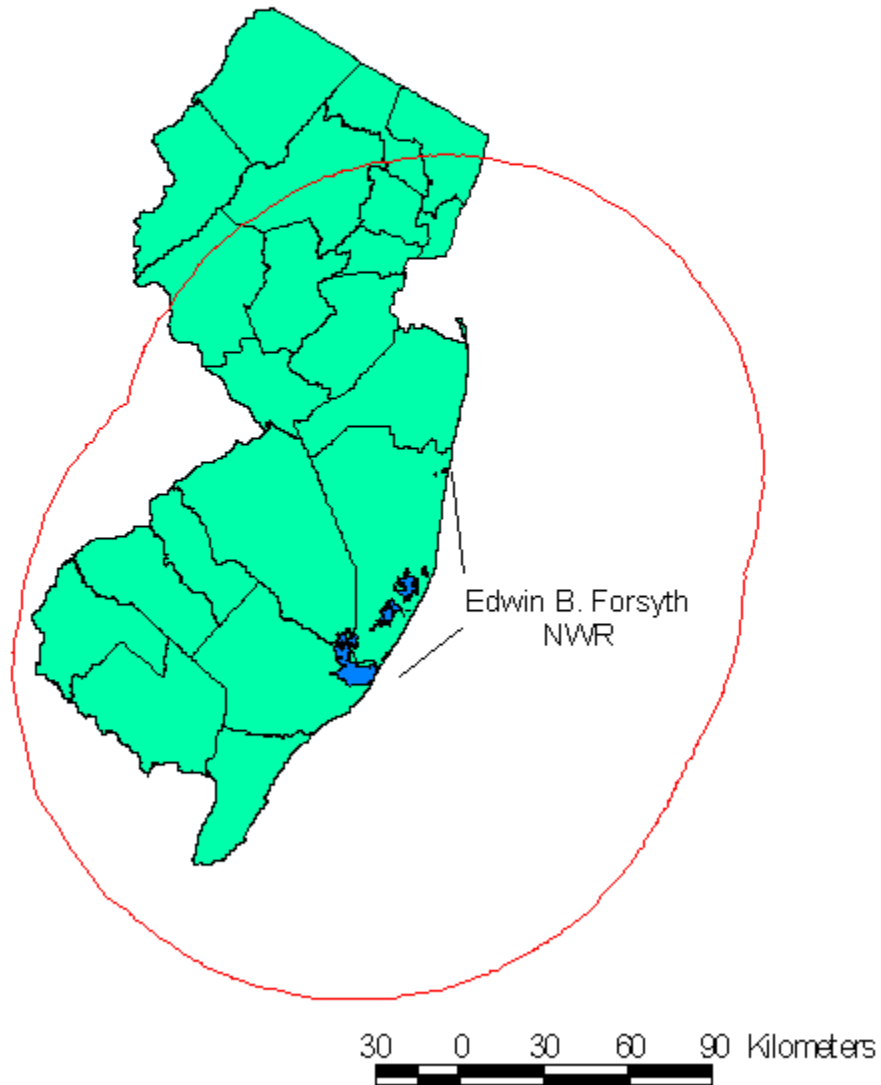
Note to the Editor: The following proposed Appendix E is to be deleted from the adopted rule.

*[

]*

Appendix E

"Class I Air Quality Area"
100 Kilometer Buffer Zone



Note to the Editor: The following Appendix C is to be included in the adopted rule.

***APPENDIX C**

Map indicating 100 Kilometer Buffer Zone

Surrounding Edwin B. Forsythe National Wildlife Refuge

*

7:27-31.6 Interface with the open market emissions trading program

- (a) A person may, under the following conditions, convert *[an allowance allocated under the NO_x Budget Program to]* **one or more NO_x Budget allowances into** DER credits which may be transferred, retired or used pursuant to the Open Market Emissions Trading Program:
- _____ 1. The *[allowance being]* **person identifies the allowance(s) to be** converted ***[is]* into DER credits. The allowances shall be** one of the following:
 - i. *[An allowance]* **Allowance(s)** allocated for a given control period to the owner or operator of a budget source located in New Jersey, provided that:
 - (1) The person converting the *[allowances]* **allowance(s) into DER credits** is the person to whom the *[allowance]* **allowance(s)** were allocated;
 - (2) The **first and** last *[day]* **days** of the control period for which the *[allowance was]* **allowance(s) were** allocated under the NO_x Budget Program is given as the *[final day]* **first and last days** of the generation period under the Open Market Emissions Trading Program; and
 - (3) *[A]* **The** budget source *[owned or operated by the person converting the allowance]* achieved, during the control period, NO_x emission reductions *[which are]* **that:**
 - (A) **Are** equal to or greater than the emissions value of the *[allowance]* **allowance(s)** being converted*;* and
[which satisfy]
 - (B) **Satisfy** the requirements *[for use]* **that apply to emission reductions to be used** as the basis for a DER credit under N.J.A.C. 7:27-30.4, 30.5 and 30.6; or
 - ii. An incentive allowance allocated pursuant to N.J.A.C. 7:27- ~~31.8(c)~~ **31.7(c)3 or (e)3** to an electric consumer that reduced its electricity consumption through implementation of an energy efficiency measure;
 2. The person's AAR *[has submitted]* **submits** an Allowance Transfer Form to the NATS Administrator indicating that the *[allowance]* **identified allowance(s)** are to be transferred to the **NATS Account Number NJ0000000300, which is a** retirement account **established by the Department**;
 3. The *[calculation of]* **person determines** the number of DER credits generated ~~*[shall be]*~~ in accordance with N.J.A.C. 7:27-30.5. ~~*[The]*~~ **However, instead of calculating the quantity of emission reductions on which the DER credits are**

based pursuant to N.J.A.C. 7:27-30.5(c), the person shall take as given that this quantity equals the* emissions value of the *[allowance being converted shall be the quantity of emission reductionson which credits are based, and this]* ***retired allowance(s). This given*** quantity *[is]* ***shall be*** subject to discounting, as applicable, under ***N.J.A.C. 7:27-30.5(h). The number of DER credits generated shall then be calculated pursuant to*** N.J.A.C. 7:27-30.5(i); and

4. The person *[converting the allowances]* submits a Notice of DER Generation *[submitted]* pursuant to N.J.A.C. 7:27-30.7 and 30.19 *[in which the reductions are used as the basis]* for the ***generation of*** DER credits ***based on the retirement of the allowances***.

(b) (No change.)

7:27A-3.10 Civil administrative penalties for violation of rules adopted pursuant to the Act

(a)-(h) (No change.)

- (i) The Department may, in its discretion, accept discrete emission reduction (DER) credits, that have been verified pursuant to N.J.A.C. 7:27-30.10, in full or partial settlement of a monetary penalty in accordance with the procedures for credit use at N.J.A.C. 7:27-30. In determining whether to allow the use of DER credits in full or partial settlement of a penalty and the appropriate amount to accept, the Department shall consider whether the cost associated with acquiring the credits provides a sufficient deterrent to future violation.

(j)-(l) (No change.)

- (m) The violations of N.J.A.C. 7:27 and the civil administrative penalty amounts for each violation are set forth in the following Civil Administrative Penalty Schedule. The numbers of the following subsections correspond to the numbers of the corresponding subchapter in N.J.A.C. 7:27. The rule summaries for the requirements set forth in the Civil Administrative Penalty Schedule in this subsection are provided for informational purposes only and have no legal effect.

CIVIL ADMINISTRATIVE PENALTY SCHEDULE

1.-7. (No change.)

8. The violations of N.J.A.C. 7:27-8, Permits and Certificates, and the civil administrative penalty amounts for each violation, per source, are as set forth in the following table:

Citation	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-8.3(a) Obtain Preconstruction Permit				
Class: Estimated Potential Emission Rate of Source Operation				
1. - 4. (No change.)				
5. Regulated pursuant to NSPS, NESHAPS, PSDAQ, EOR, TXS and HAP (Table * [C]* *B*) ⁶	\$2,000	\$4,000	\$10,000	\$30,000

Citation	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-8.3(b) Obtain Certificate				
Class: Estimated Potential Emission Rate of Source Operation				
1. - 4. (No change.)				
5. Regulated pursuant to NSPS, NESHAPS, PSDAQ, EOR, TXS and HAP (Table * [C]* *B*) ⁶	\$2,000	\$4,000	\$10,000	\$30,000

...

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-8.3(e)	Emissions Detected by Stack Tests from Source Operation				
...					
	For greater than 22.8 pounds per hour, or greater than 5.7 pounds per hour for VOC and NO _x or air contaminants regulated pursuant to HAP (Table * [C])* *B*) ⁶);				
1.-3.	(No change.)				

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-8.3(e)	Preconstruction Permit and Certificate Conditions and Provisions				
Class: Emissions from Source Operation					
1.	Less than 0.5 pounds per hour	\$400 ⁵	\$800 ⁵	\$2,000 ⁵	\$6,000 ⁵
2.	From 0.5 through 10 pounds per hour, or 0.5 through 2.5 pounds per hour for VOC and NO _x	\$800 ⁵	\$1,600 ⁵	\$4,000 ⁵	\$12,000 ⁵

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
3.	Greater than 10 through 22.8 pounds per hour, or greater than 2.5 through 5.7 pounds per hour for VOC and NO _x	\$1,200 ⁵	\$2,400 ⁵	\$6,000 ⁵	\$18,000 ⁵
4.	Greater than 22.8 pounds per hour, or greater than 5.7 pounds per hour for VOC and NO _x	\$2,000 ⁵	\$4,000 ⁵	\$10,000 ⁵	\$30,000 ⁵
5.	Regulated pursuant to NSPS, NESHAPS, PSDAQ, EOR, TXS and HAP (Table * [C]* * B *) ⁶	\$3,000	\$6,000	\$15,000	\$45,000
N.J.A.C. 7:27-8.3(e)	Preconstruction Permit and Certificate Conditions and Provisions Detected by Continuous Monitoring System	See N.J.A.C. 7:27A-3.10*[(m)]* * (n) * for the calculation of civil administrative penalties ⁵			

...

*[Citation	Rule Summary	
N.J.A.C.7:27-8.4(r)	Use DER credits for increase in allowable emissions under SOTA, BACT or LAER permit	A violation of this rule provision will be considered a violation of the emission limit for which DER credits were to be used for compliance and the user will be subject to corresponding penalties.]*

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-8.9(a)	Submit Records	\$500	\$1,000	\$2,500	\$7,500
N.J.A.C. 7:27-8.9(b)	Submit Report	\$500	\$1,000	\$2,500	\$7,500
N.J.A.C. 7:27-8.9(c)	Certify Report	\$300	\$600	\$1,500	\$4,500
N.J.A.C. 7:27-8.9(d)	Submit Emission Report	\$500	\$1,000	\$2,500	\$7,500

⁴ Per Air Contaminant Exceeding Allowable Standard—Revoke Certificate to Operate Under N.J.A.C. 7:27-8 or Revoke Operating Permit Under N.J.A.C. 7:27-22 (if applicable)

⁵ Based on Permit, if Applicable, or if Not, Estimate of Air Contaminant with Greatest Emission Rate Without Controls

⁶ NSPS (40 CFR 60)
NESHAPS (40 CFR 61)
PSDAQ (40 CFR 51)
EOR (N.J.A.C. 7:27-18)
TXS (N.J.A.C. 7:27-17)
HAP *[(TABLE C)]* (N.J.A.C. 7:27-8, Appendix 1 *, **Table B***)

9.-21. (No change.)

22. The violations of N.J.A.C. 7:27-22, Operating Permits, and the civil administrative penalty amounts for each violation, per operating source, are as set forth in the following table:

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-22.3(a)	Obtain and Maintain Operating Permit				
Class: Estimated Potential Emission of Source Operation					
1. - 4.	(No change.)				
5.	Regulated pursuant to NSPS, NESHAPS, PSDAQ, EOR, TXS and HAP (Table * [C]* * B *) ⁶	\$2,000	\$4,000	\$10,000	\$30,000

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-22.3(b)	Obtain Operating Permit Before Operation				
Class: Estimated Potential Emission of Source Operation					
1. - 4.	(No change.)				
5.	Regulated pursuant to NSPS, NESHAPS, PSDAQ, EOR, TXS and HAP (Table * [C]* * B *) ⁶	\$2,000	\$4,000	\$10,000	\$30,000

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-22.3(c)	Emissions Not Detected by Continuous Monitoring System or Stack Test				
N.J.A.C. 7:27-22.3(d)	Proper Operation				
N.J.A.C. 7:27-22.3(e)	Other Conditions				
Class: Emission of Source Operation					
1. - 4.	(No change.)				
5.	Regulated pursuant to NSPS, NESHAPS, PSDAQ, EOR, TXS and HAP (Table * [C]* * B *) ⁶	\$3,000	\$6,000	\$15,000	\$45,000

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-22.3(e)	Emissions Detected by Stack Test Class: Maximum Allowable Emission of Source Operation ...				
	Greater than 22.8 pounds per hour, or greater than 5.7 pounds per hour for VOC and NO _x , or air contaminants regulated pursuant to HAP (Table * [C])* * B *) ⁶):				
1.-3.	(No change.)				
...					

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-22.3(q)	Certify Report	\$300	\$600	\$1,500	\$4,500

N.J.A.C. 7:27-22.3(uu)** **Compensate with DER credits for failure to perform timely testing or failure to install and/or operate control apparatus** **A violation of this rule provision will be considered a violation of the emission limit for which DER credits were to be used for compliance and the user will be subject to corresponding penalties.

N.J.A.C. 7:27-22.5(b)	Submit Application for Operating Permit	\$2,000	\$4,000	\$10,000	\$30,000
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***[Citation]** **Rule Summary**

N.J.A.C. 7:27-22.3(uu)	Compensate with DER credits for increase in allowable emissions under SOTA, BACT or LAER permit	A violation of this rule provision will be considered a violation of the emission limit for which DER credits were to be used for compliance and the user will be subject to corresponding penalties.]*
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...

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-22.14(d)	General Operating Permit Terms and Conditions Class: Estimated Potential Emission Rate of Source Operation				
1.-4.	(No change.)				
5.	Regulated pursuant to NSPS, NESHAPS, PSDAQ, EOR, TXS and HAP (Table * [C])* * B *) ⁶	\$3,000	\$6,000	\$15,000	\$45,000

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
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N.J.A.C. 7:27-22.15(b)1 Temporary Facility Operating Permit Requirements

Class: Emission of Source Operation

1. (No change.)
2. From 0.5 through 10 pounds per hour, or 0.5 through 2.5 pounds per hour for VOC and NO_x \$800¹⁰ \$1,600¹⁰ \$4,000¹⁰ ***[\$12,500]***
\$12,000₁₀
3. - 4. (No change.)
5. Regulated pursuant to NSPS, NESHAPS, PSDAQ, EOR, EHS, TXS AND HAP (Table * [C]* ***B***)⁶ \$3,000 \$6,000 \$15,000 \$45,000

***[Citation Rule Summary**

N.J.A.C. 7:27-22.3(vv) Compensate with DER credits for failure to perform timely testing or failure to install and/or operate control apparatus A violation of this rule provision will be considered a violation of the emission limit for which DER credits were to be used for compliance and the user will be subject to corresponding penalties.]*

...

⁴ Per Air Contaminant Exceeding Allowable Standard--Revoke Certificate to Operate Under N.J.A.C. 7:27-8 or Revoke Operating Permit Under N.J.A.C. 7:27-22 (if applicable).

⁶ NSPS (40 CFR 60)
NESHAPS (40 CFR 61)
PSDAQ (40 CFR 51)
EOR (N.J.A.C. 7:27-18)
TXS (N.J.A.C. 7:27-17)
HAP *[Table C]* (N.J.A.C. 7:27-22 *, **Appendix, Table B***)

¹⁰ Based on each Preconstruction Permit incorporated into the Operating Permit, if applicable, or if not, estimate of air contaminants with the stated emission rate without controls.

23.-29. (No change.)

30. The violations of N.J.A.C. 7:27-30, Open Market Emissions Trading, and the civil administrative penalty amounts for each violation, are as set forth in the following table:

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-30.7(a)	Notice of Generation must be true, accurate and complete	See N.J.A.C. 7:27 A-3.6 ¹			
N.J.A.C. 7:27-30.9(a)	Submit Notice of Transfer to registry	\$1,000	\$2,000	\$5,000	\$15,000
N.J.A.C. 7:27-30.9(a)	Notice of Transfer must be true, accurate and complete	See N.J.A.C. 7:27 A-3.6 ¹			
N.J.A.C. 7:27-30.10(d)	Submit Notice of *[DER]* Verification to registry	\$2,000	\$4,000	\$10,000	\$30,000
N.J.A.C. 7:27-30.10(d)	Notice of Verification must be true, accurate and complete	See N.J.A.C. 7:27 A-3.6 ¹			
N.J.A.C. 7:27-30.12(c)-(e)	Use restrictions	A violation of this rule provision will be considered a violation of the emission limit for which DER credits were to be used for compliance and the user will be subject to corresponding penalties.			
N.J.A.C. 7:27-30.12(g)	Use period can't begin until Notice of Intent to Use submitted	A violation of this rule provision will be considered a violation of the emission limit for which DER credits were to be used for compliance and the user will be subject to corresponding penalties.			
N.J.A.C. 7:27- *[30.12(i)5]* * <u>30.12(i)7</u> *	Hold all DER credits when Notice of Use submitted	A violation of this rule provision will be considered a violation of the emission limit for which DER credits were to be used for compliance and the user will be subject to corresponding penalties.			
N.J.A.C. 7:27-30.12(k)	Replace invalid DER credits	A violation of this rule provision will be considered a violation of the emission limit for which DER credits were to be used for compliance and the user will be subject to corresponding penalties.			
N.J.A.C. 7:27-30.12(l)	Rectify invalid verification	A violation of this rule provision will be considered a violation of the emission limit for which DER credits were to be used for compliance and the user will be subject to corresponding penalties.			
N.J.A.C. 7:27-30.14(a)1	Use DER credits to compensate for alternative VOC control plan	See N.J.A.C. 7:27 A-3.10(m)16 for civil administrative penalties for violations of N.J.A.C. 7:27-16.17(m)			
N.J.A.C. 7:27-30.14(a)2	Use DER credits to compensate for alternative NOx maximum allowable emission rate	See N.J.A.C. 7:27 A-3.10(m)19 for civil administrative penalties for violations of N.J.A.C. 7:27-19.13(i)			
N.J.A.C. 7:27-30.14(a)3	Use DER credits to compensate for innovative control technology plan	See N.J.A.C. 7:27 A-3.10(m)19 for civil administrative penalties for violations of N.J.A.C. 7:27-19.23(e)10			

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-30.7(a)	Notice of Generation must be true, accurate and complete	See N.J.A.C. 7:27 A-3.6 ¹			
N.J.A.C. 7:27-30.9(a)	Submit Notice of Transfer to registry	\$1,000	\$2,000	\$5,000	\$15,000
N.J.A.C. 7:27-30.9(a)	Notice of Transfer must be true, accurate and complete	See N.J.A.C. 7:27 A-3.6 ¹			
N.J.A.C. 7:27-30.10(d)	Submit Notice of *[DER]* Verification to registry	\$2,000	\$4,000	\$10,000	\$30,000
N.J.A.C. 7:27-30.10(d)	Notice of Verification must be true, accurate and complete	See N.J.A.C. 7:27 A-3.6 ¹			
N.J.A.C. 7:27-30.14(a)4	Use DER credits to compensate for MEG alert	See N.J.A.C. 7:27 A-3.10(m)19 for civil administrative penalties for violations of N.J.A.C. 7:27-19.24(c)			
[N.J.A.C. 7:27-30.14(a)5	Use DER credits for increase in allowable emissions under SOTA, BACT or LAER permit	See N.J.A.C. 7:27 A-3.10(m)8 and 22 for civil administrative penalties for violations of N.J.A.C. 7:27-8.4(r) and 22.3(uu) respectively]			
N.J.A.C. 7:27-30.14(a)*[6]* * <u>5</u> *	Use DER credits for failure to perform timely testing	See N.J.A.C. 7:27 A-3.10(m)8 and 22 for civil administrative penalties for violations of N.J.A.C. 7:27-8.3(1) and 22.3*[(vv)]* * <u>(uu)</u> * respectively			
N.J.A.C. 7:27-30.14(a)*[7]* * <u>6</u> *	Use DER credits for failure to install and/or operate control apparatus	See N.J.A.C. 7:27 A-3.10(m)8 and 22 for civil administrative penalties for violations of N.J.A.C. 7:27-8.3(1) and 22.3*[(vv)]* * <u>(uu)</u> * respectively.			
N.J.A.C. 7:27-30.14(d)	Comply with conditions when using DER credits for permit insurance	\$2,000 ¹	\$4,000 ¹	\$10,000 ¹	\$30,000 ¹
N.J.A.C. 7:27-30.14*[(g)]* * <u>(f)</u> *	Comply with conditions when using DER credits for emission offsets	\$2,000 ¹	\$4,000 ¹	\$10,000 ¹	\$30,000 ¹
N.J.A.C. 7:27-30.14*[(h)&(i)]* * <u>(g)&(h)</u> *	Prohibited uses	A violation of this rule provision will be considered a violation of the emission limit for which DER credits were to be used for compliance and the user will be subject to corresponding penalties.			
N.J.A.C. 7:27-30.16(a)	Submit Notice *[and]* of *[DER]* Use	\$2,000	\$4,000	\$10,000	\$30,000
N.J.A.C. 7:27-30.16(a)	Notice of Use must be true, accurate and complete	See N.J.A.C. 7:27 A-3.6 ¹			
N.J.A.C. 7:27-30.21(b)	Use must comply with geographic constraints	A violation of this rule provision will be considered a violation of the emission limit for which DER credits were to be used for compliance and the user will be subject to corresponding penalties.			

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-30.7(a)	Notice of Generation must be true, accurate and complete	See N.J.A.C. 7:27 A-3.6 ¹			
N.J.A.C. 7:27-30.9(a)	Submit Notice of Transfer to registry	\$1,000	\$2,000	\$5,000	\$15,000
N.J.A.C. 7:27-30.9(a)	Notice of Transfer must be true, accurate and complete	See N.J.A.C. 7:27 A-3.6 ¹			
N.J.A.C. 7:27-30.10(d)	Submit Notice of *[DER]* Verification to registry	\$2,000	\$4,000	\$10,000	\$30,000
N.J.A.C. 7:27-30.10(d)	Notice of Verification must be true, accurate and complete	See N.J.A.C. 7:27 A-3.6 ¹			
N.J.A.C. 7:27-30.22(a)-(d)	Recordkeeping requirements	\$500	\$1,000	\$2,500	\$7,500

¹ The Department may reduce the base penalty by applying the following factors:

- | | | |
|-----|---|---------------------------------|
| (1) | Administrative type violation not affecting quantity of DERs | 70% reduction from base penalty |
| (2) | Violation affects quantity of DERs by 1 through 25% | 50% reduction from base penalty |
| (3) | Violation affects quantity of DERs by 26% through 50% | 25% reduction from base penalty |
| (4) | Violation affects quantity of DERs by greater than 50% | 0% reduction from base penalty |
| (5) | Violation is reported to department and corrected by filing an amended Notice | 25% reduction from base penalty |

31. (No change.)

(n)-(p) (No change.)